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MANUAL

of

Rules and Practice

of the

SENATE

of the

STATE OF NEW YORK

1909

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New York (State). Senate
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MANUAL OF RULES AND PRACTICE

OF THE SENATE OF THE STATE OF NEW YORK

1909

Compiled by
LAFAYETTE B. GLEASON
Clerk of the Senate

ALBANY
J. B. LYON COMPANY, STATE PRINTERS
1909

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CONTENTS.

	PAGE.
List of Members of the Senate	1
List of Committees of the Senate	7
Rules of the Senate	11
Index to the Rules of the Senate	35
Joint Rules of the Senate and Assembly	53
Digest of the Rules and Practice of the Senate of the State of New York, arranged alphabetically.	56
Constitution of the State of New York	112
Index to the Constitution of the State of New York	327
Legislative Law	353
Index to Legislative Law	393

INTRODUCTORY.

This book is printed pursuant to resolution of the Senate, adopted February 10, 1909, as follows:

Resolved, That the Clerk of the Senate prepare and cause to be printed for the use of the Senate a digest and Manual of the Rules of the Senate, and precedents thereunder, to be printed in the same form as the Clerk's Manual, and paid for out of the appropriation for contingent expenses of the Legislature.

This volume has been carefully compiled after an examination of the Senate Journals from 1860 to 1909, and contains all the important rulings and precedents of the Senate established during that period.

LIST OF MEMBERS OF THE SENATE

WITH POLITICS, OCCUPATION, RESIDENCE AND POST-OFFICE ADDRESS OF EACH.

HON. HORACE WHITE, *Lieutenant-Governor and President of the Senate, Albany, N. Y. Home Post-office, Syracuse, N. Y.*

HON. JOHN RAINES, *Temporary President, Albany, N. Y. Home Post-office, Canandaigua, N. Y.*

LAFAYETTE B. GLEASON. *Clerk, Albany, N. Y. Home Post-office, Delhi, N. Y.*

Dist.	NAMES.	POLITICS.	OCCUPATION.	POST-OFFICE ADDRESS.
1	Orlando Hubbs	Republican.	Farmer	Central Islip, N. Y.
2	Dennis J. Harte	Democrat...	.....	35 Stevens st., L. I. City.
3	Thomas H. Cullen	Democrat...	Shipping	256 President st., B'klyn.
4	Reuben L. Gledhill	Republican.	Manager	833 Willoughby avenue, Brooklyn.
5	Barth S. Cronin	Democrat...	General contractor	573 Clinton st., Brooklyn.
6	Eugene M. Travis	Republican.	Fruit and vegetables	146 Quincy st., Brooklyn.
7	Patrick H. McCarren	Democrat...	Lawyer	97 Berry st., Brooklyn.
8	Alvah W. Burlingame, Jr.	Republican.	Lawyer	79 Hancock st., Brooklyn.
9	John Kissel	Republican.	Treasurer	281 Wallabout st., B'klyn.
10	Charles Alt	Republican.	Insurance	282 Wyona st., Brooklyn.
11	Christopher D. Sullivan	Democrat...	Real estate	280 Broadway, N. Y. City.
12	Timothy D. Sullivan	Democrat...	Theatrical business	38 E. 4th st., N. Y. City.
13	William J. A. Caffrey	Democrat...	Lawyer	346 Broadway, N. Y. City.
14	Thomas F. Grady	Democrat...	Lawyer	151 E. 30th st., N. Y. City.

SENATORS—(*Continued*).

Dist.	NAMES.	POLITICS.	OCCUPATION.	POST-OFFICE ADDRESS.
15	Thomas J. McManus...	Democrat...	Lawyer.....	452 W. 49th st., N. Y. City
16	Robert F. Wagner.....	Democrat...	Lawyer.....	1297 Lexington avenue, New York City.
17	George B. Agnew.....	Republican.	Real estate and insur..	22 William st., N. Y. City.
18	Alexander Brough.....	Republican.	Lawyer.....	150 Nassau st., N. Y. City.
19	Josiah T. Newcomb....	Republican.	Lawyer.....	28 St. Nicholas place, New York City.
20	James J. Frawley.....	Democrat...	Contractor.....	13–21 Park row, N. Y. City.
21	Stephen J. Stilwell....	Democrat...	Lawyer.....	3311 Olinville ave., N.Y.C.
22	George M. S. Schulz...	Democrat...	Lawyer.....	1410 Crotona Park East, New York City.
23	Howard R. Bayne.....	Democrat...	Lawyer.....	39 St. Mark's place, New Brighton, S. I.
24	J. Mayhew Wainwright.	Republican.	Lawyer.....	Rye.
25	John B. Rose.....	Republican.	Manufacturer.....	Palatine Hotel, Newb'gh.
26	John F. Schlosser.....	Republican.	Lawyer.....	Fishkill Landing.
27	John N. Cordts.....	Republican.	Real estate.....	Kingston.
28	William J. Grattan....	Republican.	Lawyer.....	192 Mohawk st., Cohoes.
29	Victor M. Allen.....	Republican.	Banker.....	Petersburg.
30	Edgar Truman Brackett	Republican.	Lawyer.....	Saratoga Springs.
31	William A. Gardner...	Democrat...	Manufacturer of brooms.	Amsterdam.
32	Seth G. Heacock.....	Republican.	Oil producer.....	Ilion.
33	James A. Emerson....	Republican.	Banker.....	Warrensburgh.
34	William T. O'Neil.....	Republican.	Farmer and manufact'r.	St. Regis Falls.
35	George H. Cobb.....	Republican.	Lawyer.....	308 Keys ave., Watert'wn.
36	Frederick M. Davenport	Republican.	Professor in Law.....	Clinton, N. Y.
37	Jotham P. Allds.....	Republican.	Lawyer.....	Norwich.
38	Hendrick S. Holden...	Republican.	Banker.....	Syracuse.
39	Harvey D. Hinman....	Republican.	Lawyer.....	Binghamton.

40	Charles J. Hewitt	Republican.	Banker	Locke.
41	Benn Conger	Republican.	Banker and manufact'r.	Groton.
42	John Raines	Republican.	Lawyer and ins. agent	Canandaigua.
43	Frank C. Platt	Republican.	Farmer	Painted Post.
44	George H. Witter	Republican.	Physician and surgeon.	Wellsville.
45	George L. Meade	Republican.	Lawyer	337 University ave., Roch.
46	Charles J. White	Republican.	Farmer	Brockport.
47	James P. Mackenzie	Republican.	Wholesale lumber	North Tonawanda.
48	Henry Wayland Hill	Republican.	Lawyer	471 Linwood ave., Buffalo.
49	Samuel J. Ramsperger	Democrat.	Bookkeeper	232 Emslie st., Buffalo.
50	George Allen Davis	Republican.	Lawyer	Lancaster.
51	Charles M. Hamilton	Republican.	Farming	Ripley.

Republicans	35
Democrats	16
	51

Previous Service in the Legislature of Members of the Senate of 1909.

NAMES.	ASSEMBLY.	SENATE.
Agnew, George B.	1903, 1904, 1905, 1906	1907, 1908.
Allds, Jotham P.	1896, '97, '98, '99, 1900, 1901, 1902	1903, 1904, 1905, 1906, 1907, 1908.
Brackett, Edgar Truman.		1896, '97, '98, '99, 1900, '01, '02, '03, '04, '05, '06.
Brough, Alexander	1907.	
Cobb, George H.		1905, 1906, 1907, 1908.
Conger, Benn	1900, 1901.	
Cordts, John N.		1905, 1906, 1907, 1908.
Cullen, Thomas H.	1896, 1897, 1898	1899, 1900, 1901, 1902, 1903, 1904, 1905 1906, 1907, 1908.
Davis, George A.		1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908.
Emerson, James A.		1907, 1908.
Frawley, James J.		1903, 1904, 1905, 1906, 1907, 1908.
Grady, Thomas F.	1877, 1878, 1879	1882, '83, '89, '96, '97, '98, '99, 1900, '01, '02, '03, '04, '05, '06, '07, '08.
Grattan, William J.	1903, 1904, 1905, 1906	1907, 1908.
Hamilton, Charles M.	1907, 1908.	
Harte, Dennis J.	1906	1907, 1908.
Heacock, Seth G.		1907, 1908.
Hewitt, Charles J.	1902, 1903, 1904.	
Hill, Henry Wayland	1896, '97, '98, '99, 1900	1901, '02, '03, '04, '05, '06, '07, '08.
Hinman, Harvey D.		1905, 1906, 1907, 1908.
Hubbs, Orlando	1903, '04, '05, '06, '07, '08	
McCarren, Patrick H.	1882, 1883, 1889	1890, '91, '92, '93, '96, '97, '98, '99, 1900, '01, '02, '03, '04, '05, '06, '07, '08.
McManus, Thomas J.	1892, '93, 1903, 1904, 1905	1907, 1908.

Meade, George L.	1908.	
Newcomb, Josiah T.	1902, 1904.	
O'Neil, William T.	1882, 1883, 1884, 1885	1907, 1908.
Platt, Frank C.	1900, '01, '02, '03, '04, '05.	
Raines, John	1881, 1882, 1885	1886, '87, '88, '89, '95, '96, '97, '98, '99, 1900, '01, '02, '03, '04, '05, '06, '07, '08.
Ramsperger, Samuel J.		1899, 1900, '01, '02, '03, '04, '07, '08.
Schulz, George M. S.	1907, 1908.	
Sullivan, Christopher D.		1907, 1908.
Sullivan, Timothy D.	1887, 1888, 1889, 1890, 1891, 1892, 1893	1894, '95, '96, '97, '98, '99, 1900, '01, '02.
Travis, Eugene M.		1907, 1908.
Wagner, Robert F.	1905, 1907, 1908.	
Wainwright, J. Mayhew.	1902, 1903, 1904, 1905, 1906, 1907, 1908.	

LIST OF STANDING COMMITTEES OF THE SENATE FOR THE YEARS 1909–1910.

ON FINANCE.— Messrs. Allds, Hill, Cordts, O'Neil, Brackett, Cobb, Agnew, Grattan, Raines, Ramsperger, Frawley, Harte, Grady.

ON JUDICIARY.— Messrs. Davis, Allds, Cobb, Hinman, Grattan, Wainwright, Meade, Schlosser, Raines, McCarren, Wagner, Schulz, Grady.

ON AFFAIRS OF CITIES.— Messrs. Hinman, Davis, Meade, Davenport, Travis, Newcomb, Holden, Rose, Raines, McCarren, Ramsperger, Frawley, Grady.

ON RAILROADS.— Messrs. Cobb, Emerson, Agnew, Gledhill, Wainwright, Hamilton, Mackenzie, Burlingame, Holden, McManus, Cronin.

ON CODES.— Messrs. Hill, Brackett, Brough, Newcomb, Schlosser, Burlingame, Davenport, McCarren, Caffrey.

ON TAXATION AND RETRENCHMENT.— Messrs. Meade, Grattan, Platt, Holden, Rose, Kissel, Allen, Cullen, Sullivan, T. D.

ON COMMERCE AND NAVIGATION.— Messrs. Cordts, Emerson, Travis, Witter, Meade, Alt, Mackenzie, Harte, Bayne.

ON CANALS.— Messrs. Allen, Heacock, Hill, Travis, Wainwright, White, Mackenzie, Ramsperger, Stilwell.

ON INSURANCE.— Messrs. Grattan, Agnew, Wainwright, Schlosser, Hewitt, Newcomb, Alt, Ramsperger, Sullivan, T. D.

ON FOREST, FISH AND GAME.— Messrs. Hamilton, Cobb, Holden, Heacock, Hubbs, Alt, White, Frawley, McCarren.

ON INTERNAL AFFAIRS OF TOWNS AND COUNTIES.— Messrs. Heacock, Allds, Hubbs, Hamilton, Conger, White, Hewitt, Bayne, Gardner.

ON MISCELLANEOUS CORPORATIONS.— Messrs. Wainwright, Hewitt, Platt, Gledhill, Rose, Cullen, Sullivan, C. D.

ON BANKS.—Messrs. Travis, O'Neil, Conger, Holden, Allen, Harte, McManus.

ON PENAL INSTITUTIONS.— Messrs. Emerson, Brough, Alt, Allen, Gledhill, Stilwell, Cronin.

ON PUBLIC EDUCATION.— Messrs. Brough, Cordts, Conger, Mackenzie, Davenport, Sullivan, T. D., Wagner.

ON PUBLIC HEALTH.—Messrs. Witter, Platt, Kissel, White, Burlingame, Schulz, Caffrey.

ON MILITARY AFFAIRS.— Messrs. Rose, Heacock, Brough, Kissel, Hamilton, McManus, Gardner.

ON REVISION.— Messrs. O'Neil, Emerson, Burlingame, Gledhill, Davenport, Sullivan, C. D., Cronin.

ON AFFAIRS OF VILLAGES.— Messrs. Hubbs, Hewitt, Conger, Mackenzie, Witter, Bayne, Gardner.

ON AGRICULTURE.— Messrs. Platt, Cordts, Hubbs, White, Witter, Bayne, Gardner.

ON PRIVILEGES AND ELECTIONS.— Messrs. Schlosser, Hill, Newcomb, Davenport, Burlingame, Bayne, Stilwell.

ON INDIAN AFFAIRS.— Messrs. Newcomb, Hinman, Hamilton, Schulz, Caffrey.

ON TRADE AND MANUFACTURES.— Messrs. Conger, Gledhill, Kissel, Sullivan, C. D., Gardner.

ON PRINTED AND ENGROSSED BILLS.— Messrs. Agnew, Hinman, Alt, Wagner, McManus.

ON PUBLIC PRINTING.— Messrs. Hewitt, Emerson, Witter, Cullen, McManus.

ON RULES.— Messrs. Raines, Allds, Grady.

RULES OF THE SENATE.

Adopted January 26, 1909.

Order of Business.

1. President to take the chair; journal to be read. Order of business.

Of the President.

2. (1) To decide questions of order; name committees.
   (2) To assign doorkeepers to their respective duties and stations.
   (3) To certify passage of all bills.

Of the Temporary President.

3. In the absence of the Lieutenant-Governor, temporary President to act.

Of the Clerk.

4. (1) To have journals printed and placed on file.
   (2) To furnish, daily, printed list of general orders; to see that all bills are acted upon in order in which reported; calendar.
   (3) To present bills originating in Senate to Governor, and to enter on journals. To transmit bills to Assembly.
   (4) To designate reporters.

Of the Sergeant-at-Arms.

5. To be in attendance on the Senate, to preserve order.

Of the Rights and Duties of Senators.

6. (1) Relative to presentation of petitions, reports, resolutions, etc.
   (2) To preserve order while journals or public papers are being read.

(3) Debate; Senators to address the President, and not to proceed until recognized; limitation; President to decide who is entitled to floor.
(4) Within bar of Senate when question is stated, to vote, unless, etc.
(5) Wishing to be excused from voting, may make brief statement.
(6) and (7) Absentees to be sent for.

Committees and their Duties.

7. Standing committees.
8. On printed and engrossed bills, to examine all bills, resolutions, etc., and report as correctly printed or engrossed before third reading.
9. On revision, duties of.
10. Reports of committees on bills; proceedings when not considered at time of making.

Of General Orders and Special Orders.

11. What to constitute the general orders; business of; how taken up.
12. Special orders.

Of the Committee of the Whole.

13. Rules to be observed in; may strike out enacting clause in bills, and if report is agreed to by Senate, bill to be deemed rejected.
14. Bills, committed to, to be read through by sections; amendments not offered in, not in order except by unanimous consent.
15. Motion to rise and report progress always in order.

Of Bills.

16. How introduced.
17. Proceedings when reported by committee of the whole, when deemed lost; final question to be taken immediately after third reading.
18. To receive three readings; not to be amended or committed until twice read; not to be read a third time out of its order; resolutions proposing amendments to Constitution to be treated as bills, to be acted on in committee of the whole.

19. Or resolution amending Constitution, after ordered to a third reading, may not be amended, except, etc.
20. Two-thirds bills.
21. Question on final passage to be taken by ayes and nays.
22. To be printed in the order as reported by committees, unless, etc.
23. When final vote on, may be reconsidered; to be read by sections.
24. To retain place when quorum not present.

Of Motions and their Precedence.

25. When question is before Senate, no motion to be received, except, etc.; motion to adjourn or lay on the table to be decided without debate.
26. When to be reduced to writing.
27. When questions to be divided.
28. Certain to preclude debate of main question.
29. Filling of blanks; question, how taken.
30. Reconsideration.
31. Concurrent resolutions.

Of Closing Debate.

32. Closing debate.
33. Of a quorum.

Of Questions of Order.

34. Priority of business.
35. When reading of paper is called for and objected to, to be decided without debate.
36. Senator called to order; to take his seat; when may proceed; words objected to to be taken down in writing.
37. Divisions; when names to be entered alphabetically on journal; Senators to vote unless excused.

Of Executive Sessions.

38. When President shall direct doors to be closed, etc.; secrecy to be observed.
39. Proceedings in, to be kept in separate journal.
40. Senate may go into, when deemed necessary; nominations in, how referred.

Previous Service in the Legislature of Members of the Senate of 1909.

NAMES.	ASSEMBLY.	SENATE.
Agnew, George B.	1903, 1904, 1905, 1906	1907, 1908.
Allds, Jotham P.	1896, '97, '98, '99, 1900, 1901, 1902	1903, 1904, 1905, 1906, 1907, 1908.
Brackett, Edgar Truman.		1896, '97, '98, '99, 1900, '01, '02, '03, '04, '05, '06.
Brough, Alexander	1907.	
Cobb, George H.		1905, 1906, 1907, 1908.
Conger, Benn	1900, 1901.	
Cordts, John N.		1905, 1906, 1907, 1908.
Cullen, Thomas H.	1896, 1897, 1898	1899, 1900, 1901, 1902, 1903, 1904, 1905 1906, 1907, 1908.
Davis, George A.		1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908.
Emerson, James A.		1907, 1908.
Frawley, James J.		1903, 1904, 1905, 1906, 1907, 1908.
Grady, Thomas F.	1877, 1878, 1879	1882, '83, '89, '96, '97, '98, '99, 1900, '01, '02, '03, '04, '05, '06, '07, '08.
Grattan, William J.	1903, 1904, 1905, 1906	1907, 1908.
Hamilton, Charles M.	1907, 1908.	
Harte, Dennis J.	1906	1907, 1908.
Heacock, Seth G.		1907, 1908.
Hewitt, Charles J.	1902, 1903, 1904.	
Hill, Henry Wayland	1896, '97, '98, '99, 1900	1901, '02, '03, '04, '05, '06, '07, '08.
Hinman, Harvey D.		1905, 1906, 1907, 1908.
Hubbs, Orlando	1903, '04, '05, '06, '07, '08	
McCarren, Patrick H.	1882, 1883, 1889	1890, '91, '92, '93, '96, '97, '98, '99, 1900, '01, '02, '03, '04, '05, '06, '07, '08.
McManus, Thomas J.	1892, '93, 1903, 1904, 1905	1907, 1908.

Meade, George L.	1908.	
Newcomb, Josiah T.	1902, 1904.	
O'Neil, William T.	1882, 1883, 1884, 1885	1907, 1908.
Platt, Frank C.	1900, '01, '02, '03, '04, '05.	
Raines, John	1881, 1882, 1885	1886, '87, '88, '89, '95, '96, '97, '98, '99, 1900, '01, '02, '03, '04, '05, '06, '07, '08.
Ramsperger, Samuel J.		1899, 1900, '01, '02, '03, '04, '07, '08.
Schulz, George M. S.	1907, 1908.	
Sullivan, Christopher D.		1907, 1908.
Sullivan, Timothy D.	1887, 1888, 1889, 1890, 1891, 1892, 1893	1894, '95, '96, '97, '98, '99, 1900, '01, '02.
Travis, Eugene M.		1907, 1908.
Wagner, Robert F.	1905, 1907, 1908.	
Wainwright, J. Mayhew.	1902, 1903, 1904, 1905, 1906, 1907, 1908.	

OF THE CLERK.

4. (1) It shall be the duty of the Clerk to have the Journal of each day's proceedings printed, and copies thereof placed on the files of the President, Senators and reporters within three days after approval by the Senate.

(2) He shall also furnish each Senator daily with a printed list of the general orders, which shall be kept on file by the Superintendent of Documents, in the same manner as other documents, and he shall also prepare a daily calendar of all bills, engrossed or printed, for a final reading, and place and keep the same, together with printed copies of such bills, on the desk of each Senator; he shall see that all bills shall be acted upon by the Senate in the order in which they are reported and stand upon the calendar, unless otherwise ordered by two-thirds of the Senate.

(3) He shall present to the Governor, and enter upon the Journals, such bills as shall have originated in the Senate and been passed by both Houses. He shall, subject to the rules of the Senate, transmit to the Assembly all bills or concurrent resolutions which have passed the Senate.

(4) He shall designate the persons entitled to admission to the floor as reporters for the public press, not exceeding thirty-five in number, and may revoke any such designations, but no person shall be entitled to the privileges of the floor of the Senate as a legislative reporter of a newspaper who is interested in pending or contemplated legislation, or who is employed or receives compensation for influencing legislation.

OF THE SERGEANT-AT-ARMS.

5. The Sergeant-at-Arms, except when absent in the discharge of his duties, shall be in constant attendance upon the sessions of the Senate, and, under the direction of the President, aid in enforcing order on the floor of the Senate, in the lobbies, and in the rooms adjoining the Senate Chamber, and also see that no person remains on the floor unless entitled to the privileges of the same.

OF THE RIGHTS AND DUTIES OF SENATORS.

6. (1) A Senator presenting a paper shall indorse the same; if a petition, memorial, or report to the Legislature, with a brief statement of the subject of its contents, adding his name; if a notice or resolution, with his name; if a report of a committee, a statement of such report, with the name of the committee and Senator making the same.

(2) Senators shall not speak to each other or otherwise interrupt the business of the Senate, or read any newspaper while the Journals or public papers are being read; or walk out of or across the Chamber when the President is putting a question, or when a Senator is speaking pass between him and the chair.

(3) A Senator rising to debate or to present a petition or other paper, to give a notice, make a motion or report, shall address the President and shall not proceed further until recognized by the chair; he shall speak on the sume subject but twice the same day without leave of the Senate; and where two or more Senators address the chair, the President shall name the Senator who is first to speak.

(4) Every Senator shall be present within the Senate Chamber during the sessions of the Senate, unless duly excused or necessarily prevented, and shall vote on each question stated from the chair unless excused by the Senate, or unless he has a direct personal or pecuniary interest in the event of such question. If any Senator refuses to vote, unless he be excused by the Senate, or unless he be interested, such refusal shall be deemed a contempt.

(5) A Senator desiring to be excused from voting may, when his name is called, make a brief statement, not occupying over five minutes, of the reasons for making such request, and the question on excusing him shall then be taken without debate, and any Senator desiring to explain his vote upon a bill, may, when his name is called, be allowed a like opportunity.

(6) In case a less number than a quorum of the Senate shall convene, those present are authorized to send the Sergeant-at-Arms, or any other person, for the absent Senators.

(7) In all cases of absence of Senators during the sessions of the Senate the Senators present may take such measures as they deem necessary to secure the presence of the absentees, and in addition to suspension for a given period, may inflict such censure or penalty as they may deem just on those who shall not render sufficient excuse for their absence.

7. There shall be the following standing committees:

To consist of eleven members each:

Finance.
Judiciary.
Affairs of cities.
Railroads.

To consist of nine members each:
Canals.
Commerce and navigation.
Codes.
Insurance.
Taxation and retrenchment.
Forest, Fish and Game Laws.
Internal affairs of towns and counties.

To consist of seven members each:
Banks.
Military affairs.
Miscellaneous corporations.
Public health.
Penal institutions.
Revision.
Affairs of villages.
Agriculture.
Privileges and elections.

To consist of five members each:
Printed and engrossed bills.
Indian affairs.
Trade and manufactures.
Public printing.

To consist of three members:
Rules.

8. The committee on printed and engrossed bills shall examine all bills, amendments and resolutions which are required to be printed or engrossed, before they go out of the possession of the Senate, and make report when they find them correctly printed or engrossed

before they are read the third time; they shall also compare such amendments as may be made in the Assembly to Senate bills, and that are concurred in by the Senate after they shall have been reprinted or re-engrossed in the Senate, for the purpose of seeing if they are correctly printed or engrossed. And no bill shall be passed unless it shall have been printed and upon the desk of each Senator in its final form at least three calendar legislative days prior to its final passage, unless the Governor or acting Governor shall have certified to the necessity of its immediate passage, under his hand and the seal of the State, nor unless the committee on printed and engrossed bills shall have reported that such bill is correctly printed or engrossed. All bills recalled from the Governor for the purpose of amendment, if amended, and all Senate bills amended by the Assembly, and returned to the Senate for its concurrence, and all bills amended by the report of a conference committee, shall be subjected to the provisions of this rule and the second clause of Rule 4.

9. The committee on revision shall examine and correct bills referred to it, for the purpose of avoiding repetitions and ensuring accuracy in the text and references. It shall also report whether the object sought to be accomplished can be secured without a special act under existing laws, or by enactment of a general law.

10. Every report of a committee upon a bill which shall not be considered at the time of making the same, or laid on the table by a vote of the Senate shall stand upon the general orders with the bill and be entered upon the Journal.

OF GENERAL ORDERS AND SPECIAL ORDERS.

11. The matters referred to the committee of the whole Senate shall constitute the general orders, and the business of the general orders shall be taken up as follows, viz.: When the chairman named by the President has taken the chair, the Clerk shall announce the title of each bill, with the printed number, or other matter, as it shall be reached in its order, when it may be taken up on the motion of any Senator without the putting of any question therefor, and be considered immediately, and so on until the calendar is exhausted, or a motion is carried that the committee arise. Any bill not so moved shall lose its preference for the day.

12. Whenever any bill or other matter is made a special order for a particular day, and it shall not be completed on that day, it shall, unless otherwise ordered, retain its place on the calendar, as a special order in the order of business in which it was considered; and when a special order is under consideration, it shall take precedence of any special order for a subsequent hour of the same day; but such subsequent special order may be taken up immediately after the previous special order has been disposed of.

OF THE COMMITTEE OF THE WHOLE.

13. The rules of the Senate shall be observed in the committee of the whole, so far as they may be applicable, except limiting the number of times of speaking, and except that the ayes and noes shall not be taken. Such committee may strike out the enacting clause of a bill and report that fact to the Senate; and if the

report be agreed to by the Senate, it shall be deemed a rejection of the bill.

14. Bills committed to the committee of the whole Senate shall, in committee of the whole, be read through by sections. The report shall state whether or not said bill has been amended in committee of the whole. After the report the bill shall be subject to debate and amendment before the question to print or engross it is put; but such amendments only shall be in order as were offered and decided in the committee of the whole Senate, except by unanimous consent.

15. A motion that the committee rise and report progress on any bill shall always be in order, and shall be decided without debate.

OF BILLS.

16. Every bill shall be introduced by a Senator in his place, or on the report of a committee, or by message from the Assembly, and after its first and second reading unless otherwise ordered by the Senate, shall be referred to a standing or select committee, to consider and report thereon. When a bill is received as a message from the Assembly, and a Senate bill, identical therewith, is on the order of third reading in the Senate, or in the committee of the whole, the Assembly bill may be substituted for the Senate bill upon a vote of a majority of the Senate. A motion for such substitution shall be in order under the order of business of messages from the Assembly, motions and resolutions, or the order of business in which the Senate bill is. No private bill shall be introduced by a Senator, or on a report of a committee, unless accom-

panied by a memorial or petition signed and verified by the party or parties praying for the passage of the same, except by order of the Senate.

Every bill introduced by a Senator shall be in duplicate and shall have indorsed thereon a statement of its title, with his name.

The titles of all bills proposing amendments to the Greater New York Charter, or the Penal Code, the Code of Criminal Procedure, the Code of Civil Procedure, the Revised Statutes, the Consolidated Laws, or to any existing laws having a short title when introduced, must quote the descriptive name of the Code or the short title of the Consolidated Laws, or Revised Statutes, or law to be amended, with some brief reference to the subject-matter of the proposed amendment, and the Clerk of the Senate is hereby directed to return any bill to the Senator introducing the same, when this rule has not been complied with.

17. When a bill shall be reported by the committee of the whole, and not otherwise disposed of, the question shall be, "Shall the report be agreed to?" And when the report of such committee, if favorable, shall be agreed to and the bill not otherwise disposed of, the bill shall be ordered printed and engrossed for a third reading. Upon such question the merits of the bill may be debated, and a motion to commit, or recommit, or to amend, as provided in the fourteenth rule, or lay on the table, or to postpone to a future day, shall be in order. If such question be decided in the negative, such bills shall be deemed lost.

18. Every bill shall receive three readings previous to its being passed, and the President shall give notice

at each, whether it be the first, second or third. No bill shall be amended or committed until it shall have been read twice, and no bill shall be read a third time out of its regular order, unless on a vote of two-thirds of all the Senators present voting; and all resolutions which propose any amendment of the Constitution shall be treated in the form of proceedings on them, in a similar manner with bills, and no bills shall be ordered to a third reading without having been acted upon in committee of the whole.

19. After a bill or resolution to amend the Constitution shall be ordered to a third reading, no motion to amend the same shall be in order without unanimous consent; but any such bill or resolution may be committed prior to the final reading thereof.

20. When any bill requiring the concurrence of two-thirds of the Senators is under consideration, such concurrence shall not be requisite except on the question of its final passage.

21. The question on the final passage of every bill shall be taken by ayes and noes, which shall be entered on the Journal, and unless the bill receives the number of votes required by the Constitution to pass it, it shall be declared lost, except in cases provided for by the twenty-fourth rule, and such question shall be taken immediately after the third reading and without debate.

22. Every bill immediately upon its introduction shall be printed and placed on the files of the Senators. It shall retain its original printed number when reprinted, together with its new number thereafter during all stages of its progress. All bills reported favorably or for consideration, if reported with amendments, shall be immediately reprinted.

Every bill when introduced, and every amendment thereafter made to such bill amending existing law, must have all new matter underscored, and all matter eliminated by amendment from existing law must appear in its proper place inclosed in brackets. In the printed bill such new matter shall be italicized and all matter eliminated from existing law shall be inclosed in black-faced brackets. Where a printed bill is amended by eliminating new matter from such bill, the same shall be omitted in the reprint of the original.

It shall be the duty of the President to direct the Clerk to cause any bill appearing on the calendar and not complying with this rule to be immediately amended and reprinted so as to comply with the same.

There shall be printed for the use of the Senate as authorized by section seven of the State Printing Law, three hundred additional copies of such general Senate bills as may be designated by the Clerk of the Senate.

23. The vote on the final passage of any bill appropriating moneys or property, or creating, continuing, altering or removing any body politic or corporate, shall not be reconsidered whenever any such bill shall be lost, unless by a vote of a majority of all the Senators elected, but all other bills, when the same shall have been lost, may be reconsidered by a vote of a majority of all the Senators present and voting.

24. If, on taking the final question on a bill, it shall appear that a constitutional quorum is not present, or if the bill requires a vote of two-thirds of all the Senators elected to pass it, and it appears that such number is not present, the bill shall retain its place on the calendar and be again taken up in its regular order.

ON MOTIONS AND THEIR PRECEDENCE.

25. When a question is before the Senate, only the following motions shall be received, and such motions shall have precedence in the order here stated, viz.:

1. For an adjournment.
2. For a call of the Senate.
3. To lay on the table.
4. To postpone indefinitely.
5. To postpone to a certain day.
6. To commit to a standing committee.
7. To commit to a select committee.
8. To commit to the committee of the whole.
9. To amend.

The motion to adjourn, or for a call of the Senate, or to lay on the table, shall be decided without debate, and shall always be in order except as provided in Rules 1, 32 and 47.

26. All motions shall be reduced to writing, if desired by the President or any Senator, delivered to the Clerk, and read before the same shall be debated; any motion may be withdrawn at any time before decision or amendment.

27. If the question in debate contains several points, a Senator may have the same divided, provided the division called for embodies a distinct principle or statement of fact.

28. A motion to postpone, commit or refer, until it is decided, shall preclude all debate of the main question.

29. When a blank is to be filled, the different sums or time shall be proposed, the question shall be first taken on the highest sum and the longest time.

30. When a question has once been put and decided, it shall be in order for any Senator to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after the bill, resolution, message, report, amendment or motion, upon which the vote was taken, shall have gone out of the possession of the Senate; and before the first day of March no bill or resolution shall be sent from the Senate on the day of its passage; nor shall any motion for reconsideration be in order unless made on the same day on which the vote was taken, or within the next three days of the actual session of the Senate thereafter. Nor shall any question be reconsidered more than once. But when a bill or resolution shall have been recalled from the Governor or from the Assembly, a motion for reconsideration may be made at any time thereafter while the same is in the possession of the Senate, and all resolutions recalling a bill or resolution from the Governor or Assembly shall be regarded as privileged. No vote shall be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

31. All concurrent resolutions shall lie on the table at least one day, except as otherwise directed by Rules 18 and 30, and except concurrent resolutions referring to adjournment.

ON CLOSING DEBATE.

32. When any bill, resolution or motion shall have been under consideration for six hours it shall be in order for any Senator to move to close debate, and the

President shall recognize the Senator who wishes to make such motion. Such motion shall not be amendable or debatable and shall be immediately put, and if it shall receive the affirmative votes of a majority of the Senators present, the pending measure shall take precedence over all other business. The vote shall thereupon be taken upon such bill, motion or resolution, with such amendments as may be pending at the time of such motion according to the rules of the Senate, but without further debate, except that any Senator who may desire so to do shall be permitted to speak thereon not more than once and not exceeding one-half hour. After such motion to close debate has been made by any Senator no other motion shall be in order until such motion has been voted upon by the Senate. After the Senate shall have adopted the motion to close debate, as hereinbefore provided, no motion shall be in order but one motion to adjourn and a motion to commit. Should said motion to adjourn be carried, the measure under consideration shall be the pending question when the Senate shall again convene, and shall be taken up at the point where it was at the time of such adjournment. The motion to close debate may be ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill, resolution or motion to its passage or rejection. All incidental questions of order, or motions pending at the time such motion is made to close debate, whether the same be on appeal or otherwise shall be decided without debate.

33. If at any time during the session of the Senate a question shall be raised by any Senator as to the presence of a quorum, the presiding officer shall forthwith direct the Clerk to call the roll, and shall announce the result, and such proceedings shall be without debate; but no Senator while speaking shall be interrupted by any other Senator raising the question of a lack of a quorum, and the question as to the presence of a quorum shall not be raised oftener than once in every hour unless the lack of a quorum shall be disclosed upon a roll call of the ayes and noes. Whenever upon a roll call any Senator who is upon the floor of the Senate chamber refuses to make response when his name is called, it shall be the duty of the presiding officer, either upon his own motion or upon the suggestion of any Senator, to request the Senator so remaining silent to respond to his name, and if such Senator fails to do so, the fact of such request and refusal shall be entered in the Journal, and such Senator shall be counted as present for the purpose of constituting a quorum.

OF QUESTIONS OF ORDER.

34. All questions relating to the priority of business shall be decided without debate.

35. When the reading of a paper is called for, except petitions, and the same is objected to by any Senator, it shall be determined by a vote of the Senate, without debate.

36. When a Senator shall be called to order, he shall take his seat until the President shall have determined whether he is in order or not; and if decided to be out

of order, he shall not proceed without the permission of the Senate; and every question of order shall be decided by the President, subject to an appeal to the Senate by any Senator. No second appeal shall be determined until the original appeal shall be decided; and if a Senator shall be called to order for words spoken, the words excepted to shall be immediately taken down in writing.

37. Upon a division in the Senate, the names of those who voted for or against a question shall be entered alphabetically on the journal, if any Senator requires it, except on motion to excuse a Senator from voting, which shall be decided by count; and each Senator called upon, unless for special reasons he be excused by the Senate, shall declare openly and without debate his assent or dissent to the question.

OF EXECUTIVE SESSION.

38. On motion to close the doors of the Senate, on the discussion of business which in the opinion of any Senator may require secrecy, and during the consideration of all business in executive session, the President shall direct all persons, except the Senators and Clerk of the Senate, his messenger, the Journal Clerk and Sergeant-at-Arms of the Senate to withdraw; and during the discussion of said motion the doors shall remain shut; and every Senator and officer of the Senate shall keep secret all such matters, proceedings and things which shall transpire while the doors remain closed.

39. The proceedings of the Senate upon executive business shall be kept in a journal separate from its proceedings upon legislative business.

40. The Senate shall go into consideration of executive business at such times as may be ordered by a vote of the majority of the Senators present. All nominations sent by the Governor for the appointment of any officer (except notaries public) shall be referred, unless the Senate otherwise orders, to a standing committee of the Senate. Nominations of persons for the office of notary public shall be referred to the Senator from the district in which the nominee resides, except that when the nominee resides in the city and county of New York, the reference shall be to the Senators from that city and county; and when the nominee resides in the county of Kings, the reference shall be to the Senators from that county.

MISCELLANEOUS PROVISIONS.

41. None but the President, Senators and Clerks shall be allowed to take books belonging to the Senate library; and on taking books, each of the persons above mentioned shall furnish to the Librarian a list of those taken and his name, and shall be responsible for them; and it shall be the duty of the Librarian to have a book in which to enter the delivery of the books so taken and their return, and it shall be his duty to see that the books in the library are kept in order and in their place at the opening of each morning session.

42. It shall be the duty of the Superintendent of Documents and his assistants to have the documents and bills promptly placed on the files of the President and Senators in the order of their numbers, and it shall be the duty of the Postmaster to see that the mails are punctually delivered.

43. The Senate library, post-office and document rooms shall be opened every morning during the session of the Legislature at 8.30 o'clock and remain open until 5.30 p. m., and shall also be open during all the hours the Senate is in session, except that on Sundays the post-office shall be open from 12 noon to 1 o'clock p. m.

44. A rule of the Senate shall not be altered, suspended or rescinded without a vote of a majority of all the Senators elected; and a motion to suspend, alter or rescind any such rule, or any joint rule of the two Houses, shall not be in order, without the unanimous consent of the Senate, unless one day's previous notice thereof in writing shall be given; specifying the purpose of the proposed suspension, alteration or rescission; provided that nothing in this rule shall limit the provisions of the first and thirty-second rules.

45. Whenever a claim is referred to a committee, and the committee reports that the claim ought not to be allowed, and the report is adopted by the Senate, it shall not be in order to move to take the papers from the files for the purpose of referring them to a subsequent session, unless the claimants shall present a memorial for that purpose, stating in what manner the committee have erred in their report, or that new evidence had been discovered since the report, and setting forth the same in the memorial.

46. All resolutions calling for the expenditure of moneys must be decided by a majority vote of all the members elected to the Senate, upon a call of the roll.

47. For the purpose of securing the attendance of Senators, a call of the Senate may be ordered at any

time, but such call shall not be in order after the voting on any question has begun, nor after the third reading of a bill has been completed, nor after the motion to close debate has been ordered pursuant to Rule 32, unless it shall appear upon an actual count by the President that a quorum is not present.

48. Persons not members of the Senate, or officers or employees thereof, shall be admitted to the floor of the Senate only as follows:

1. The Governor, his secretary and messenger.

2. The members and Clerk of the Assembly, and clerks and messengers of the Assembly in the exercise of an official duty directly connected with the business of the Senate.

3. The elected State officers, heads of departments and their deputies.

4. Reporters of the Senate and of the Assembly designated under the rules, unless a designation theretofore given them has been revoked.

5. Ladies and members of a Senator's family, or of the family of the President of the Senate, on the card of a Senator, or of the President of the Senate.

6. Former members of the Senate.

7. Any person not hereinbefore named may be admitted to the parlor of the Senate.

8. During the sessions of the Senate, no person other than a Senator shall occupy the chair of a Senator.

49. An officer or employee of the Senate shall not solicit subscriptions, for any purpose, from any other officer or employee thereof, nor from any Senator. Nor shall any person be permitted to solicit or receive subscriptions or contributions for any purpose on the floor, or in the lobby of the Senate.

INDEX TO SENATE RULES.

A.

	Rule.	Page.
Absentees, may be sent for	6	18
not rendering sufficient excuse	6	18
Adjournment, measure under consideration at, pending question when Senate reconvenes	32	28
motion for, always in order, not debatable	25	26
only one in order after close of debate	32	28
precedence of	26	26
shall not be reconsidered	30	27
Admission to floor, Clerk shall designate reporters entitled to	4	16
who entitled to	48	33
Affairs of cities, standing committee on	7	18
Affairs of villages, standing committee on	7	19
Agriculture, standing committee on	7	19
Altering rule, motion to, not in order without unanimous consent unless one day's notice is given in writing	44	32
motion to suspend, alter, or rescind, when in order	44	32
requires vote of majority elected	44	32
Amendments, after close of debate vote shall be taken with amendments pending	32	28
all matter eliminated by, must be inclosed in brackets	22	25
bill amended by eliminating proposed new matter; such matter must be omitted in reprint	22	25
bill not to be amended until twice read	18	24
bill reported by committee of the whole may be, before question to print or engross is put	14	22
bill reported favorably for consideration, if amended, shall be immediately reprinted	22	24
motion to amend, order of precedence	25	26
to amend bill reported by committee of the whole, when in order	17	23
to close debate, not amendable	32	28
only such in order as were offered and decided in committee of the whole, except by unanimous consent	14	22
report of committee of whole shall state whether bill has been amended in said committee	14	22
to Constitution, how treated	19	24

	Rule.	Page.
Appeal, arising after motion to close debate, not debatable	32	28
decision of President on questions of order subject to	2	15
no second, to be determined until original is decided	36	30
Appointment of officers, other than notaries, nominations sent by Governor for, to whom referred	40	31
Appropriations, bills appropriating money or property, when may not be reconsidered	23	25
Assembly, all bills amended by, and returned for concurrence to rule 8 and second clause of rule 4	8	20
bills introduced by message from, to be referred to standing or select committee	16	22
bills recalled from Assembly or Governor may be reconsidered at any time	30	27
messages from, shall be received at any time	1	15
resolution recalling bill or resolution from, regarded as privileged	30	27
when Assembly bill may be substituted for Senate bill	16	22
Attendance, call of Senate for securing, when in order	47	32
members present may take measures to secure	6	18
Ayes and noes not to be taken in committee of the whole	13	21
to be taken on final passage of bill and entered on Journal	21	24

B.

Banks, standing committee on	7	19
Bills, after first and second reading, shall be referred to standing or select committee, unless otherwise ordered	16	22
all except those specified in rule 23, when lost, may be reconsidered by vote of majority present	23	25
amending existing laws, new matter must be underscored	22	25
before the first day of March shall not be sent from Senate on day of its final passage	30	27
cannot be passed unless printed in final form and on desks of Senators for three days, except Governor sends emergency message	8	20
Clerk shall see that all are acted upon in order reported and stand upon calendar, unless otherwise ordered	4	16
committed to committee of the whole, to be read through by sections	14	22

Bills — Continued.	Rule.	Page.
committee of the whole may strike out enacting clause and report fact to the Senate	13	21
considered for six hours, motion to close debate on them in order	32	27
daily calendar of, with printed copies, to be kept on desks of Senators	4	16
each shall receive three readings before being passed	18	23
final passage of, appropriating money, etc., not to be reconsidered if lost unless by majority elected	23	25
question on, not debatable	21	24
question on, must be taken immediately after third reading of	21	24
to be immediately certified to by President and delivered to Clerk	2	15
unless receiving number of votes required declared lost, except as provided by rule 24	21	24
vote to be taken by ayes and noes and entered on Journal	21	24
if constitutional quorum is not present, etc., to be laid on table and final question taken when Senate orders	24	25
immediately on introduction must be printed and placed on files of Senators	22	24
in committee of the whole, calendar to be gone through unless motion carried that committee rise	11	21
Clerk shall announce title with printed number	11	21
if not moved loses preference for the day	11	21
made special order for particular day and not completed to retain place in general orders	12	21
may be moved when reached by any Senator	11	21
motion that committee rise and report progress on bill always in order, but not debatable	15	22
shall be announced in their regular order	11	21
introduction of, by Senator, to be in duplicate	16	23
each shall be introduced by Senator in his place, or on report of committee or by message from Assembly	16	22
second order of business	1	14
to be by districts in their numerical order	1	14
matter eliminated by amendments of, must be inclosed in brackets	22	25

Bills — Continued.	Rule.	Page.
merits of, may be debated when reported by committee of the whole	17	23
motion to substitute Assembly for Senate bill, when in order	16	22
motion to close debate on, if decided in affirmative bill takes precedence over all other business	32	28
may be ordered on single motion, series of motions, amendments, etc.	32	28
may embrace all motions or amendments and include bill, resolution, or motion to its final passage or rejection	32	28
motion not amendable or debatable	32	28
to be immediately put	32	28
no bill shall be amended or committed until twice read	18	24
no bill shall be ordered to third reading without having been acted upon in committee of the whole	18	24
President shall give notice at each reading whether it is first, second or third	18	23
printed and engrossed, standing committee on	7	19
private, how introduced	16	22
recalled from Governor for amendment or amended by Assembly or conference committee, subject to rule 9 and second clause of rule 4	8	20
reconsideration of, not in order after bill has gone out of possession of Senate	30	27
all, except those specified in rule 23, when lost, may be reconsidered by vote of majority present	23	25
referred to committee on revision, shall be examined and corrected	9	20
rejection of, agreement to report of committee of the whole to strike out enacting clause, is	13	21
report of committee on, not considered or laid on table, shall stand on general orders and be entered on Journal	10	20
report of the committee of the whole, when agreed to, bill shall be ordered printed and engrossed for third reading, unless otherwise disposed of	17	23
shall state whether bill has been amended in said committee	14	22
reported by committee of the whole, motion to commit, recommit, amend, lay on table, or postpone in order	17	23
and not otherwise disposed of question shall be "Shall report be agreed to?"	17	23

Bills — Continued.	Rule.	Page.
reported by committee of the whole—Continued.		
subject to debate and amendment before question to print or engross is put	14	22
reported favorably or for consideration, if with amendments, to be immediately reprinted	22	24
requiring concurrence of two-thirds, such concurrence requisite only on final passage	20	24
shall be indorsed with statement of title and name of Senator introducing	16	23
shall be placed on files of President and Senators in order of their numbers	42	31
shall not be read third time out of its regular order unless by vote of two-thirds present voting	18	24
shall retain original printed number when reprinted, together with new number thereafter	22	24
third reading of	1	14
to amend Constitution, after ordered to third reading, no motion to amend in order, without unanimous consent	19	24
may be committed prior to final reading	19	24
to be reprinted when not complying with rule 22	22	25
unless reported on by committee on printed and engrossed bills, cannot be passed	8	20
when amended by eliminating proposed new matter such matter to be omitted in reprint	22	25
when Assembly bill may be substituted for Senate bill	16	22
when question, "Shall report of the committee of the whole be agreed to?" is decided in the negative, bill shall be deemed lost	17	23
Blanks, motion relative to filling, vote on, how taken.	29	26
Books, persons taking from library responsible for same	41	31
shall be kept in order by librarian	41	31
taken and returned to be entered in book by librarian	41	31
to be taken from library by President, Senators, and clerks only	41	31
Business, executive, President shall direct all except members and officers to withdraw, during proceedings upon, shall be kept in a Journal separate from legislative	38	30
	39	30
Senate shall go into consideration of first and third Wednesdays of each month of session at noon	40	31
none in order until Journal has been read and approved	1	14
order of	1	14

C.

	Rule.	Page.
Calendar, bills to be acted upon in the order in which they are upon	4	16
daily calendar of bills to be placed on desks of Senators	4	16
Call of Senate, motion for, and order of precedence.	25	26
when may be in order	47	32
when not in order	47	33
Canals, standing committee on	7	19
Claims, proceedings relative to presentation of	45	32
Clerk, in committee of the whole, shall announce title and number of bill as reached in order	11	21
may designate what general Senate bills extra copies of which shall be printed	22	25
shall call roll when question of quorum is raised and announce result	33	29
furnish Senators daily with printed list of general orders	4	16
prepare and place on desks of Senators daily calendar of bills for final reading, with printed copies	4	16
present to Governor and enter on Journal bills originating in Senate and passed by both Houses	4	16
see that bills are acted upon in order in which reported and stand upon calendar unless otherwise ordered	4	16
to designate persons entitled to admission to floor as reporters	4	16
to have copies of day's proceedings placed on files of President, Senators, and reporters within three days after approval	4	16
to have Journal of each day's proceedings printed	4	16
Closing debate, motion to, may be ordered on single motion, series of motions, amendments, etc.	32	28
may embrace all motions or amendments and include bill, resolution, or motion to its final passage or rejection	32	28
not amendable or debatable	32	28
to be immediately put	32	28
Codes, standing committee on	7	19
Commerce and navigation, standing committee on	7	19
Commit, motion to, until decided, precludes debate on main question	28	26
on bill reported by committee of the whole, when in order	17	23
to committee of the whole and its order of precedence	25	26
to select committee and its order of precedence	25	26
to standing committee and its order of precedence	25	26

Commit — Continued.	Rule.	Page.
when motion to close debate is pending, not debatable	32	38
Committee, adverse report of, on claim, when adopted, not in order to take papers from files except	45	22
bills introduced on report of, to whom referred	16	22
every report on bill by, not considered at time, or laid on the table, disposition of	10	20
on printed and engrossed bills, reports from, receivable at any time	1	15
shall compare amendments, etc., made in Assembly to Senate bills after reprinted or re-engrossed in Senate	8	20
shall examine all bills, amendments, and resolutions required printed or engrossed before they go out of possession of Senate	8	19
shall make report on all bills before third reading	8	19
on privileges and elections	7	19
report from, involving right of Senator to his seat shall be received at any time	1	
on revision, duties of	9	20
reports from, shall be received at any time	1	15
shall examine and correct bills referred to it	9	20
shall report whether object sought can be secured without special act or by enactment of general law	9	20
standing committee on	7	19
on rules, standing committee on	7	19
debate, on adoption of report of not to exceed one hour	1	15
consideration of report of, always in order	1	15
no motion in order until Senate has voted on adoption of report of	1	15
report from, shall be received at any time	1	15
to sit at any time	1	15
Committees, President shall appoint all, except when Senate shall otherwise order	2	15
select, reports of	1	15
standing, list of, and number of members composing	7	18
Committee of the whole	13	21
ayes and noes not to be taken in	13	21
bills committed to, shall be read through by sections	14	22
exceptions to observance of Senate rules in	13	21
matters referred to, shall constitute general orders	11	21
may strike out enacting clause of bill and report fact to Senate	13	21

Committee of the whole—Continued.	Rule.	Page.
motion that committee rise and report progress always in order and not debatable	15	22
motion to commit to, and its order of precedence	25	26
must have acted on bill before ordered to third reading	18	24
President to name chairman to preside in	2	15
report of, shall state whether bill has been amended in	14	22
rules of Senate shall be observed in so far as applicable, except, etc	13	21
Concurrent resolutions, shall lie on table at least one day, except as directed in rule 30, and those referring to adjournment	31	27
Conduct, disorderly, President may cause lobbies and galleries to be cleared in case of	2	15
Constitution, after bill or resolution to amend, is ordered to third reading, no motion to amend in order without unanimous consent	19	24
bill or resolution to amend, may be committed prior to final reading	19	24
resolutions which propose amendment of, shall be treated same as bills	18	24
Contempt, refusal of Senator to vote, unless excused or interested in pending or contemplated legislation, shall be deemed a	6	18

D.

Debate, after motion to close is adopted, no motion in order but one motion to adjourn	32	28
bill reported by committee of the whole, subject to, before question to print or engross is put	14	22
closing debate	32	27
questions not debatable:		
call of Senate	25	26
main question, until motion to postpone, commit, or refer is decided	28	26
objections to reading paper other than petitions	35	29
of presence of quorum	33	29
on final passage	21	24
priority of business	34	29
that committee of the whole rise and report progress on bill	15	22
to adjourn	25	26
to close debate	32	27
to commit, when motion to close debate is pending	32	28

Debate—Continued.	Rule.	Page.
questions not debatable—Continued.		
to lay on the table	25	26
of order, after motion to close debate and pending such motion	32	28
when motion to close, may be ordered	32	28
when question in, may be divided	27	26
Division of Senate, names of those voting in, shall be entered alphabetically on minutes if Senator requires, except on motion to excuse Senator from voting	37	30
Document rooms, when shall be kept open	43	32
Documents, Superintendent of, duties of	42	31
shall keep on file printed list of general orders.	4	16
shall place documents and bills on files of President and Senators in order of their numbers.	42	31
E.		
Employees, shall not solicit subscriptions from officers, etc	49	33
Executive session, during consideration of business in, President shall direct all except Senators and officers to withdraw	38	30
nominations in, to whom referred	40	31
proceedings of, to be kept in a journal separate from legislative business	39	30
when Senate shall go into	40	31
F.		
Final passage, before first day of March no bill shall be sent from Senate on day of	30	27
bill requiring concurrence of two-thirds, such concurrence not requisite except on question of	20	24
of bills appropriating money, etc	23	25
question on, must be taken immediately after third reading, without debate	21	24
not receiving number of votes required, declared lost, except as provided by rule 24	21	24
shall be taken by ayes and noes and entered on Journal	21	24
when constitutional quorum, etc., is not present, disposition of	24	25
Finance, standing committee on	7	18
Floor, admission to, Clerk shall designate what persons entitled to, as reporters	4	16
who besides members of Senate entitled to	48	33
Forest, fish, and game laws, standing committee on.	7	19
G.		
Galleries, disturbance in, President may cause to be cleared	2	15

	Rule.	Page.
General orders, bill made special order for particular day and not completed shall retain its place on	12	21
matters referred to committee of the whole shall constitute	11	21
order in which business of, shall be taken up	11	21
printed list of, to be furnished Senators daily by Clerk	4	16
printed list of, to be kept on file by Superintendent of Documents	4	16
when report of committee on bills shall stand on	10	20
Governor, messages from, shall be received at any time	1	14
motion for reconsideration of bill recalled from, may be made at any time	30	27
nominations sent by, for appointment of officers except notaries, to whom referred	40	31
Greater New York, amendment to laws of	16	23
I.		
Indian affairs, standing committee on	7	19
Insurance, standing committee on	7	19
Internal affairs of towns and counties	7	19
J.		
Journal, ayes and noes on question of final passage to be entered on	21	24
Clerk to enter upon, bills originating in Senate passed by both houses	4	16
mistakes in, to be corrected before order of business is taken up	1	14
of each day's proceedings to be printed, copies placed on files of President, Senators, and reporters, etc	4	16
proceedings in executive session, shall be kept in a journal separate from legislative business	39	30
Senator refusing to respond to name on a roll-call, when called on by presiding officer, fact shall be entered on	33	29
to be read before other business is taken up	1	14
when report of committee on bill shall be entered upon	10	20
Judiciary, standing committee on	7	18
L.		
Librarian, duties of	41	31
Library, Senate, persons taking books from, responsible for same	41	31
President, Senators, and Clerks only allowed to take books from	41	31
when shall be open	43	32

M.

	Rule.	Page.
Memorial, Senator presenting, must indorse with brief statement of subject of contents	6	17
Message from Assembly shall be received at any time	1	14
from Governor shall be received at any time	1	14
Military affairs, standing committee on	7	19
Miscellaneous corporations, standing committee on	7	19
Motions, but one in order, to adjourn, after adoption of motion to close debate	32	28
may be withdrawn at any time before decision or amendment	26	26
none in order until vote be taken on adoption of report of committee on rules	1	15
precedence of	25	26
President or Senator may require, reduced to writing and be read by Clerk	26	26
what only shall be received, when question is before Senate	25	26
Motion for call of Senate, its order of precedence	25	26
always in order except as provided in rules 1, 32, and 47	47	33
not debatable	25	26
for reconsideration of bill recalled from Governor or Assembly may be made at any time	30	27
to adjourn, always in order except as provided in rules 1, 33, and 47	25	26
not debatable	25	26
not to be reconsidered	30	27
only one in order after close of debate	32	28
precedence of	25	26
to amend, bill reported by committee of the whole, when in order	17	23
none in order until bill has been twice read	18	24
order of precedence	25	26
to recommit, lay on table, or postpone report of committee of the whole, when in order	17	23
until decided, precludes debate on main question	28	26
to close debate, in order after bill, resolution or motion shall have been considered six hours	32	27
may be ordered on single motion, series of motions, etc	32	28
may embrace all authorized motions, amendments, etc	32	28
no other motion in order until same has been voted on	32	28
not amendable or debatable	32	28
President shall recognize Senator wishing to make	32	28
to be immediately put	32	28

Motion for call of Senate—Continued.	Rule.	Page.
to close doors, doors shall remain closed during discussion of	38	30
to commit, not debatable when motion to close debate is pending	32	28
to committee of whole, order of precedence	25	26
to select committee, order of precedence	25	26
to standing committee, order of precedence	25	26
to excuse from voting, to be decided by count	37	30
to fill blanks, how taken	29	25
to lay on table, always in order except as provided in rules 1, 32, and 47	25	26
not debatable	25	26
order of precedence	25	26
to postpone indefinitely, order of precedence	25	2
bill reported by committee of whole, when in order	17	23
precludes debate on main question until decided	28	26
to certain day, order of precedence	25	26
to reconsider, in order after question has been once put and decided	30	27
not in order after bill, resolution, etc., has gone out of possession of Senate	30	27
not in order unless made same day vote was taken or within next three days' session	30	27
vote to adjourn or lay on table, not in order	30	27
to refer, until decided, precludes debate on main question	28	26
to rescind, rule of Senate or joint rule, when in order	44	32
not in order unless one day's notice be given in writing, except by unanimous consent	44	32
requires vote of majority of Senators elected	44	32
to rise and report progress in committee of whole, always in order and not debatable	15	22
to substitute Assembly for Senate bill, when in order	16	22

N.

New York, Greater, amendments to laws of	16	22
Notary public, nominations for, to be referred to Senator from district in which nominee resides, except in New York and Kings counties	40	31

O.

Objection to reading papers, other than petitions, to be decided by vote without debate	35	29

	Rule.	Page.
Officers, nominations of, other than notaries, sent by Governor referred to any standing committee unless otherwise ordered	40	31
of Senate shall not solicit subscriptions	49	33
of State, communications and reports from, shall be received at any time	1	14
to keep secret everything transpiring in secret session	38	30
Order, questions of	34	29
arising after motion to close debate not debatable	32	28
decision by President on, subject to appeal	36	29
Senator out of, must not proceed without permission	36	29
when called to, must take his seat	36	29
words on which called to, must be taken in writing	36	29
Order and decorum, President shall preserve	2	15
Order of business	1	14

P.

Papers, petitions, memorials, etc., objection to reading of, except petitions, shall be decided by vote without debate	35	29
presented by Senator, shall be indorsed by him	6	17
Penal institutions, standing committee on	7	19
Petitions, presentation of, first order of business after reading and approving Journal	1	14
Senators presenting petitions, memorials, or reports must indorse with brief statement of subject of contents	6	17
signed and verified, to accompany private bills.	16	23
Postmaster must see that mails are punctually delivered	42	31
Post-office, when shall be kept open	43	32
Postpone, indefinitely, motion to, and order or precedence	25	26
motion to, on bill reported by committee of whole, when in order	17	23
motion to, until decided, precludes debate on main question	28	26
to certain day, motion to, and order of precedence	25	26
Precedence of motions	25	26
of special order under consideration	12	21
pending measure to have, over all other business after close of debate	32	28
President, in case of disturbance in lobbies and galleries, may cause them to be cleared	2	15
may require motions to be reduced to writing and read before debated	26	26

	Rule.	Page.
President—Continued.		
on every appeal, shall have the right in his place to assign reasons for his decision	2	15
on final passage of bills, shall state whether passed as majority, three-fifths, or two-thirds bill, and deliver bill to Clerk	2	15
on question of quorum, shall direct roll to be called without debate	33	29
shall appoint all committees unless otherwise ordered	2	15
shall assign doorkeepers their duties and stations	2	15
shall decide all questions of order subject to appeal	2	15
shall direct Clerk to cause bill not complying with rule 22 to be immediately amended and reprinted	22	25
shall give notice at each reading of bill whether it be first, second, or third	18	23
shall name chairman to preside in committee of the whole	2	15
shall preserve order and decorum	2	15
shall recognize Senator desiring to make motion to close debate	32	28
shall request all but officers and members to withdraw during executive session	38	30
shall request Senator to respond to his name at roll-call if refusing to do so	33	29
to call Senate to order at hour to which adjourned	1	14
upon final passage of bill, shall certify that same has been duly passed, with date thereof	2	15
President, temporary, when acting as President, to have same powers and duties	3	15
Printed and engrossed bills, standing committee on.	7	19
duties of committee on	8	19
reports of committee on, shall be received at any time	1	15
shall compare amendments, etc., made in Assembly to Senate bills, after reprinted or reengrossed in Senate	8	20
shall examine all bills, amendments, etc., required printed or engrossed before they go out of possession of Senate	8	19
Priority of business, questions relating to, not debatable	34	29
Private bills, none shall be introduced unless accompanied by petition signed by party praying for passage of, except by order of Senate	16	22
Privileges and elections, standing committee on	7	19
Public education, standing committee on	7	19
Public health, standing committee on	7	19
Public moneys, bills appropriating	23	25
Public printing, standing committee on	7	19

Q.

	Rule.	Page.
Quorum must be present before Journal can be read	1	14
on question as to presence of, roll shall be called forthwith and result announced, not debatable	33	29
question as to presence of, not to be raised oftener than once every hour unless lack of, be disclosed on roll-call	33	29
Senator not to be interrupted by question of lack of	33	29
Senator refusing to respond to name when requested shall be counted present for purpose of constituting	33	29
when less than, shall convene, those present may send for absentees	6	18

R.

Railroads, standing committee on	7	19
Recommit, motion to, on bill reported by committee of the whole, when in order	17	23
Reconsideration, motion for, in order after question has been once put and decided	30	27
motion for, not in order after bill, resolution, etc., has gone out of possession of Senate	30	27
not in order unless made same day vote was taken or within next three days of session	30	27
on bill recalled from Governor or Assembly, may be made at any time	30	27
no question shall be reconsidered more than once	30	27
vote to adjourn or lay on table, not subject to	30	27
when vote for, requires majority of all Senators elected	23	25
Refer, motion to, until decided, shall preclude debate on main question	28	26
Reporters, Clerk shall designate who entitled to admission, as	4	16
entitled to admission, not to exceed thirty	4	16
none entitled to admission as, if interested in pending or contemplated legislation	4	16
Rescind, motion to, when in order	44	32
rule of Senate not to be rescinded without vote of majority of Senators elected	44	32
Resolutions and motions	1	14
before first day of March, shall not be sent from Senate on day of its final passage	30	27
calling for expenditure of money, decided by vote of all Senators elected, on call of roll	46	32
concurrent, to lie on table at least one day, except as directed in rule 31, and those referring to adjournment	31	27

Resolutions and motions—Continued.	Rule.	Page.
motion to print must be referred to committee on public printing	8	20
no motion for reconsideration of, after out of possession of Senate	30	27
proposing amendment to Constitution, how treated	18	24
recalling from Governor or Assembly, regarded as privileged	30	27
Senator presenting, must indorse with his name	6	17
Revision, standing committee on	7	19
duties of committee on	9	20
shall examine and correct bills referred to it.	9	20
shall report whether object sought can be secured by special act or by enactment of general law	9	20
report from, may be received at any time	1	15
Rules in debate	6	17
Rules of Senate, may not be altered, suspended, or rescinded without vote of majority of Senators elected	44	32
motion to suspend, not in order unless one day's notice in writing be given, except by unanimous consent	44	32
to be observed in committee of whole as far as applicable, except, etc	13	21

S.

Senate, call of, when may be ordered	47	32
matters referred to committee of whole shall constitute general orders in	12	21
members shall keep secret everything transpiring in secret session of	38	30
out of order shall not proceed without permission of	36	29
motion for call of, always in order except as provided in rules 1, 33 and 47	25	26
its order of precedence	25	26
not debatable	25	26
motions received by, and their precedence	25	26
on division of, names of voters shall be entered alphabetically on minutes, if Senator requires, etc	37	30
President to call, to order at hour to which adjourned	1	14
what persons, not members of, admitted to floor.	48	33
when, shall go into executive session	40	31
Senators and officers to keep secret everything transpiring in executive session	38	30
called to order for words spoken, words excepted to shall be taken in writing	36	30

Senators and officers—Continued.	Rule.	Page.
desiring to be excused from voting may state reasons	6	18
each to be supplied daily with list of general orders	4	16
if out of order, shall not proceed without permission	36	29
may appeal from President's decision on questions of order	36	30
may not raise question of quorum oftener than once unless lack of, be disclosed on roll-call	33	29
may require motion to be in writing and read by Clerk before being debated	26	26
motion to excuse from voting to be decided by count	6	18
must not read newspapers while Journal or public papers are being read	6	17
must not pass between Senator speaking and chair	6	17
must not walk out of or across chamber when President is putting question	6	17
not to be interrupted by question of lack of quorum	33	29
presenting petitions must indorse same with brief statement of subject of contents	6	17
presenting report of committee shall give statement of, with name of committee and Senator making same	6	17
refusing to respond to name at roll call, when called upon by presiding officer, fact shall be entered in Journal and Senator counted to constitute quorum	33	29
refusing to vote unless excused or interested in pending or contemplated legislation, such refusal shall be deemed a contempt	6	18
rights and duties of	6	17
rising to debate or present paper, etc., shall address President and proceed no farther until recognized	6	17
seats of, only to be occupied by Senator during session	48	33
shall be present during sessions unless excused or necessarily prevented	6	18
shall not interrupt business of Senate	6	17
shall speak but twice on same subject on the same day without leave of Senate	6	17
shall vote on each question, unless excused or has direct personal or pecuniary interest therein	6	18
when called upon, unless excused, shall without debate declare assent or dissent to question	37	30
when called to order shall take his seat	36	29
when he may have question in debate divided	27	26

	Rule.	Page.
Senate bills, general, 300 extra copies of such as Clerk may designate, shall be printed	22	24
Sergeant-at-arms, may be sent for absentees	6	18
shall be in constant attendance except when absent in discharge of duty	5	17
shall see that no person remains on floor unless entitled to privileges of	5	17
under direction of President, shall aid in enforcing order on floor, in lobbies, etc	5	17
Special orders, for particular day, not completed, to retain place in general orders for another day	12	21
when under consideration shall take precedence of special order for subsequent hour of same day	12	21
Suspend rule of Senate, when in order	44	32

T.

Taxation and retrenchment, standing committee on	7	19
Trade and manufactures, standing committee on	7	19

Joint Rules of the Senate and Assembly.

Adopted January 26, 1909.

Rule 1. It shall be in the power of either House to amend any amendment made by the other to any bill or resolution.

Rule 2. In every case of difference between the two Houses, upon any subject of legislation, either House may request a conference, and appoint a committee for that purpose, and the other shall also appoint a committee to confer. The committee shall meet at such hour and place as shall be appointed by the chairman of the committee on the part of the House requesting such conference. The committee shall report in writing, and shall be authorized to report such modifications or amendments as they think advisable. But no committee on conference shall consider or report on any matter except those directly at issue between the two Houses. The papers shall be left with the conferees of the House assenting to such conference, and they shall present the report of the committee to their House. When such House shall have acted thereon, it shall transmit the same, and the papers relating thereto, to the other, with a message certifying its action

thereon. Every report of a committee of conference shall be read through, in each House, before a vote is taken on the same.

Rule 3. It shall be in order for either House to recede from any subject matter of difference existing between the two Houses at any time previous to conference, whether the papers on which such difference arose are before the House receding, formally or informally; and on such vote to recede the same number shall be required to constitute a quorum to act thereon, and to assent to such receding, as was required on the original question out of which the difference arose.

Rule 4. In case of a failure of the conferees to agree, a report of such disagreement may be made and a further conference may be had, either by the same or new committees appointed for such purpose. After each House shall have refused conference and shall have adhered to their disagreement, the bill which is the subject of difference shall be deemed lost, and shall not be again revived during the same session in either House.

Rule 5. All joint committees of the two Houses, and all committees of conference, shall consist of three Senators and five members of the Assembly, unless otherwise specially ordered by concurrent resolution, and in voting, all questions shall be determined by the vote of the committee of each House taken separately.

Rule 6. Whenever there shall be an election of officers by the joint action of the two Houses, the result shall be certified by the President of the Senate and Speaker of the Assembly, and shall be reported by the presiding officer of each House to their respective Houses, and be entered on the journals of each, and shall be communicated to such official as the law may require by the clerks of the two Houses.

APPENDIX.

Digest of the Rules and Practice of the Senate of the State of New York, Arranged Alphabetically.

ADJOURN.— It has been decided and acted upon that the motion "to fix the *day* to which the house shall adjourn" takes precedence of a motion "to adjourn." Barclay, p. 5.

A motion "to fix the *hour* to which the house shall adjourn" does not take precedence of a motion to adjourn, and can only be made when resolutions are in order. Barclay, p. 6.

A motion to adjourn cannot be received after another question is actually put, and while the house is actually engaged in voting. Barclay, p. 6.

A motion to adjourn cannot be received after a bill has been read through the third time, but the vote on final passage must be taken.

— *To fix time to which to.*— If it is desired to have an adjourned meeting of the assembly, it is best some time before its close to move, "That when this house adjourns, it adjourns to meet at such a time," specifying the time. This motion can be amended by altering the time, but if made when another question is before the

assembly, it stands as any other main question, and debated. If made when no other business is before the assembly, it stands as any other main question, and can be debated. This motion can be made even while the assembly is voting on the motion to adjourn, but not when another member has the floor. Roberts, p. 169.

— *To a particular time.*— If previously it had been decided when they adjourned to adjourn to a particular time, then the chair states that the assembly stands adjourned to that time. If the motion to adjourn is qualified by specifying the time, as "to adjourn to to-morrow evening," it cannot be made when any other question is before the assembly; like any other main motion, it can then be amended and debated.

Roberts, p. 170.

A motion simply to adjourn is in no instance debatable; but if, in order, it is moved to adjourn to a particular day, or for a particular time, the proposition will admit of debate. In this form it cannot be moved when anything else is pending; for, in this form, it is itself a principal proposition, and not a privileged question. Mell, par. 167.

A motion to adjourn cannot take a member from the floor, cannot interrupt the verification of a vote, and cannot be entertained while an assembly is dividing.

Reed's Rules, sec. 169.

A motion to adjourn *sine die* is subject to a motion to commit, and is debatable.

Legislative Manual.

AMENDMENT.—An amendment, though inconsistent with one already adopted, cannot be shut out for that reason, but must be put to a vote if insisted on. The inconsistency may be good ground for its rejection by the house, but is no ground for its suppression by the chair. Croswell, p. 46.

The friends of a bill or section must have the privilege of selecting the most advantageous form for it before it is liable to be suppressed by a substitute.
Warrington, p. 68.
Croswell, p. 46.

— *Substitute.*—An amendment may be moved to an amendment, but it is not admitted in another degree. But it is a well-settled practice of the house that there may be pending, at the same time with such amendment to the amendment, an amendment in the nature of a substitute for part or the whole of the original text, and an amendment to that amendment. It was decided many years ago that if the motion to amend the original matter was *first* submitted, it was not then in order to submit an amendment in the nature of a substitute, but it was subsequently decided otherwise, and the practice ever since has been in accordance with the latter decision. So, now, notwithstanding the pendency of a motion to amend an amendment to the original matter, a motion to amend, in the nature of a substitute, and a motion to amend that amendment, may be received, but cannot be voted upon until the original matter is perfected.
Barclay's Digest, pp. 8 and 9.

— *Preamble.*— When a proposition consists of several paragraphs, sections or resolutions, the natural order is to commence at the beginning, and proceed to amend it paragraph by paragraph in succession. When a latter part is amended, it is not in order to recur back and amend a former part. The proper course is for the presiding officer to cause to be read the proposition, pausing at the end of each paragraph, and inquiring if any amendment is proposed. Should none be offered, he will pass on to the next, and so on to the end. But there is an exception to this in the case of a preamble. As amendment of the resolution may require a corresponding alteration in the preamble; this latter is not to be considered and amended until the resolutions have been perfected. Mell, par. 119.

Every bill amending existing law upon its introduction and if reprinted must in the bill have all new matter underscored before it can be properly before the Senate.

Rule 23.

Lt.-Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1540.

If motion to amend be laid on table it carries with it the main question. Reed's Rules, sec. 114.

APPEAL.— *from the decision of the chair:*

Cannot be amended.

Cannot be debated when it relates to indecorum.

Or to transgressions of rules of speaking.

Or to the propriety of business.

Or if it is made while the previous question is pending.

Opens to debate the grounds of the decision of the presiding officer. Crosswell's Manual, p. 30.
Roberts on Rules of Order, p. 38.

May be laid on the table. If carried, the decision of the chair stands.
Roberts, pp. 41–42.
Barclay's Digest, p. 13.

Motion to table an appeal from a decision of the chair, if carried, does not carry with it the subject-matter; it carries only the appeal.
Speaker Malby, Assembly Journal, 1894, p. 2678.
Lt.-Gov. Woodruff, Senate Journal, 1902, Vol. 2, pp. 1257–1375.

Vote on, may be reconsidered, but vote on motion to table an appeal cannot be reconsidered.
Roberts, pp. 39 and 40.
Cushing, par. 1466.
Reed's Rules, p. 150.

Is too late if debate or other business intervenes.
Cushing, par. 1465.

If a new point of order is raised, when an appeal is pending, no second appeal is in order, nor does the withdrawal of the first appeal change the case.
Cushing, par. 1470.

May be withdrawn at the pleasure of the mover, and renewed by the same person or another, and may be debated itself, but not the question out of which it arose.

Main question may be withdrawn before it is decided or amended, and then the appeal falls. If the appeal is laid on the table, the main question is still before the house. Cushing, par. 1467.

Adjournment does not suppress an appeal. Cushing, par. 1467.

Is debatable, though the question giving rise to it may be undebatable. Cushing, par. 1466.

If there is a tie on an appeal, the decision of the chair is sustained. Roberts, pp. 39, 94.

In all cases the chair may decide the question, and if he pleases may sustain his own decision by means of his casting or other vote. Cushing, par. 1471.

Is not debatable (1) when the subject relates to transgressions of the rules of speaking, or to some indecorum, or to the priority of business; (2) when the previous question was pending at the time the question of order was raised. Roberts, p. 167.

On an appeal from his decisions the presiding officer can participate in the debate without vacating the chair. It is out of order for anyone to speak on the decision of a point of order, unless an appeal has been taken from such decision. But the presiding officer may accompany his ruling, if so disposed, with a concise statement of his reasons. Mell, par. 155.

BILLS.— Where an appeal has been decided, and by virtue of such decision a bill taken up and passed, it is

too late to move a reconsideration of the vote on the appeal.

Barclay's Digest, p. 14. See page 512.

A bill must be read in full upon each reading if any senator so requests, unless the rules are suspended.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 669; Rule 18.

It requires a two-thirds vote to pass a bill appropriating public money or property for local or private purposes.

Constitution, Art. 3, sec. 20.

Lt.-Gov. Higgins, Senate Journal, 1904, Vol. 2, p. 1245.

A bill may be read out of its regular order by vote of two-thirds present voting.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 2, p. 920; Rule 18

Assembly bill amending the charter of a city and sent to the Senate for concurrence may be committed to the committee of the whole.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 71.

A motion to substitute Assembly bill for a Senate bill identical therewith may be made in order of third reading or in committee of the whole, upon a vote of majority of the Senate.

Lt.-Gov. Woodruff, Senate Journal, 1902, Vol. 2, p. 1423.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1256; Rule 16.

Suspension of the rules for the purpose of reading and passing a bill does not simply place the bill in position for advancement, but advances it.

Lt.-Gov. Woodruff, Senate Journal, 1902, Vol. 2, p. 1375.

All bills that involve any appropriation from the treasury of the State, when introduced into the Senate shall be referred to the committee on finance.

Legislative Law, sec. 23.

Lt.-Gov. Chanler, Senate Journal, 1907, p. 700.

The same number of votes are necessary to reconsider the vote by which a bill was passed as are necessary to the final passage of the bill.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 2, p. 1319; Rule **23.**

A committee may report any bill it sees fit, and the Senate can take such action as it sees fit.

Lt.-Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1317.

A bill introduced by a committee is not required by the rules to be referred to a standing committee.

Lt.-Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1317.

Every bill amending existing law upon its introduction and if reprinted must in the body of the bill have all new matter underscored before it can be properly before the Senate.

Lt.-Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1540; Rule **22.**

A motion that a bill be reprinted and recommitted is not in order when bill is in the committee of the whole.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 2, p. 1589.

A motion to discharge the committee of the whole from further consideration of a bill can only be made in the order of business of motions and resolutions.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 2, p. 1588.

It does not require unanimous consent to refer a bill to the committee of the whole.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1841.

A motion to reconsider vote by which a bill was lost cannot be entertained if more than three days has elapsed since vote was taken.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1415; Rule 30.

Two-thirds vote of the Senate is required to consider bill out of its regular order.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 550.

A roll call having been ordered a motion for reading of bill in full is not in order.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 320.

All bills after first and second reading, when not otherwise ordered, shall be referred to a standing or select committee to report thereon.

Rule 16.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 219.

A bill of the same title and subject as one which has previously been rejected by the Senate cannot be received.

Lt.-Gov. Sheehan, Senate Journal, 1894, p. 1353.

Lt.-Gov. Hoskins, Senate Journal, 1881, p. 935.

But see Rule 16; also Art. 3, sec. 13, of Constitution.

When a committee has been discharged from further consideration of a bill, a motion that bill have its third reading is then in order.

Senate Journal, 1892, p. 54.

But see Rule 18.

A call of the Senate may be ordered at any time, but such call shall not be order after the third reading of a bill has been completed, nor after the motion to close debate has been ordered pursuant to Rule 33, unless it shall appear by actual count by the President that a quorum is not present.

Lt.-Gov. Jones, Senate Journal, 1891, p. 381; Rule 47.

BILLS.— *City.*— When returned by mayor vetoed can be fully considered.

Lt.-Gov. Chanler, Senate Journal, 1907, p. 2121.

BILLS.— *Third reading of.*— If a bill is laid on the table on its third reading it retains its place in the order of third reading of bills, and if taken from the

table by motion, it comes immediately again before the house on its third reading.

If a bill has been read through on its third reading, no delay of any kind is in order; the Constitution provides that the vote in such case, on its final passage, must be taken. Const., Art. 3, sec. 15.

BLANKS:—*Filling of.*—When propositions are introduced containing blanks to be filled, either with times or numbers, these must be filled before any motion is made to amend. To do this, the chair will entertain any number of propositions of time or number, and put the propositions to the house, beginning with the longest time or largest number, and continue to submit them to vote in succession, until a majority is obtained. Mell, par. 140.

CALL OF THE HOUSE.—A call of the house may be moved before the journal is read, if no quorum is present. Barclay's Digest, p. 37.

No business is in order until after the journal has been read.

Lt.-Gov. Jones, Senate Journal, 1889, p. 223.

It is not in order for the house to take a recess during a call of the house. [Indeed, no motion, except to adjourn or with reference to the call, is ever entertained during a call.]

[By an adjournment pending a call, all proceedings in the call are terminated; but where the house has previously passed an order specially directing other-

wise, such special direction should doubtless be executed.] Barclay's Digest, p. 38.

See Journal of H. R. 2, 27, p. 672.

A motion for a call of the house is not in order after a bill has been read through a third time.

Speaker Husted, Assembly Journal, 1890, p. 1120.

For the purpose of securing the attendance of Senators, a call of the Senate may be ordered at any time, but such call shall not be in order after the voting on any question has begun, nor after the third reading of a bill has been completed, nor after the motion to close debate has been ordered pursuant to Rule 33, unless it shall appear upon an actual count by the President that a quorum is not present.

Senate Rules, 1898, Rule No. 47.

For the purpose of securing the attendance of members, a call of the house may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced, nor after the third reading of a bill has been completed. Assembly Rules, 1898, Rule No. 41.

A member absent without leave is in contempt and can be punished as the house may direct.

Croswell, p. 52.
Rule 35.

When no quorum is present "a call of the house" can be ordered and compel the attendance of absent members. After the call is ordered, a motion to ad-

journ, or to dispense with further proceedings in the call, cannot be entertained until a quorum is present, or until the sergeant-at-arms reports that in his opinion no quorum can be obtained on that day.

Roberts, p. 182.

The uniform practice of the Legislature has recognized the right at any time, during a "call of the house," to move to adjourn, or to suspend further proceedings under the call.

A call of Senate may be ordered at any time, but such call shall not be in order after the third reading of a bill has been completed, or after the motion to close debate has been ordered pursuant to Rule 33, unless it shall appear by actual count by the President that a quorum is not present.

Lt.-Gov. Jones, Senate Journal, 1891, p. 381; Rule 47.

Motion for call, if lost, cannot be received until after the intervention of some parliamentary business.

Cushing's L. A., secs. 269 and 438.

Members in default excluded from voting until excused. Cushing's L. A., sec. 270.

Motion to excuse Senator may be made during call of Senate. Cushing's L. A., sec. 438.

Motion for call of Senate cannot be laid upon table.

Cushing's L. A., sec. 270.

COMMITTEES.—*Powers and Duties of.*— Unless the time and place for the meeting of a committee have

been specifically expressed by the body appointing it, these matters are left to the discretion of the committee, which, without such instructions, may meet at such time and place as to the majority shall seem most expedient and convenient. But a quorum of the committee must meet formally to transact any business; the opinions of the members cannot be taken by the chairman separately, from which opinions he is to make up his report. Everything agreed upon must have been submitted in committee, and an opportunity given for free discussion.

Lt.-Gov. Jones, Senate Journal, 1888, p. 1021.

Business is transacted in a committee with less formality than in the deliberate body from which it emanates. The members are permitted to speak as often as they please, and are not required to stand when addressing the chair. But all rules which govern motions and questions in deliberative bodies are equally applicable to committees.

Mackey's Parliamentary Law, p. 180.

— *Reconsideration of votes in.*— A reconsideration of a vote is allowed, regardless of the time elapsed, only when every member who voted with the majority is present when the consideration is moved.

Roberts, p. 70.

Minority of a committee has no right to make a report, but can only express its views by dissenting from the report of the majority.

Speaker Fish, Assembly Journal, 1896, p. 1390.
Lt.-Gov. Woodruff, Senate Journal, 1898, p. 230.

Motion to discharge a committee from further consideration is in order under the order of business of "reports of committees."

Speaker O'Grady, Assembly Journal, 1897, p. 959.

Can also be made under order of business of motions and resolutions."

Cannot be made until after the committee has had an opportunity to consider the matter referred to it.

Speaker Cole, Assembly Journal, 1888, p. 1773.

Lt.-Gov. Bruce, Senate Journal, 1905, Vol. 1, p. 926, sec. 23, Legislative Law.

A motion requesting leave for a committee to meet during a session can only be made in the order of business of motions and resolutions.

Lt.-Gov. Higgins, Senate Journal, 1904, Vol. 2, p. 902.

A meeting of a committee held during a recess granted by the Senate for that purpose is regularly and properly held.

Lt.-Gov. Higgins, Senate Journal, 1904, Vol. 2, p. 903.

Report of committee on rules and consideration of its report is always in order, and no other motion is in order until vote of Senate is had thereon.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 655.

Rule 1.

A committee may report any bill it sees fit, and the Senate can then take such action as it sees fit.

Lt.-Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1317.

A bill introduced by a committee is not required by the rules to be referred to a standing committee.

Lt.-Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1317.

A motion to discharge a committee from further consideration of a bill is not in order, unless the committee to which it was referred has had an opportunity to consider it.

Lt.-Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1309.

The Senate has no power to appoint a committee of investigation involving an expenditure, but such committee can only be appointed by concurrent resolution.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 1, p. 806.

The Senate has no power to amend the report of a committee, but can only dissent or agree to the report.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 1, p. 856.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 2, p. 1922.

It is not in the power of the Senate to recommit a report of a committee with instructions to report anything contrary to the facts.

Lt.-Gov. Woodruff, Senate Journal, 1898, Vol. 1, p. 230.

A majority of committee not concurring in report, the report must be rejected.

Lt.-Gov. Woodruff, Senate Journal, 1898, Vol. 2, p. 995.

The report of the committee on rules, if regularly presented and signed by a majority of the committee, must be received.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 551.

All bills after first and second reading when not otherwise ordered shall be referred to a standing or select committee to report thereon.

Rule 16.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 219.

No meeting of a committee having been held, a report of said committee cannot be properly presented to the Senate.

Lt.-Gov. Saxton, Senate Journal, 1895, Vol. 1, p. 466.

When a committee has been discharged from further consideration of a bill, a motion that bill have its third reading is then in order.

Lt.-Gov. Sheehan, Senate Journal, 1892, page 54.
But see Rule 18.

A motion to discharge a committee from further consideration of a bill can only be made under order of business of "reports of committees" or "motions and resolutions."

Senate Journal, 1892, p. 91.

A motion to amend the report of a conference committee is not in order.

Lt.-Gov. Hoskins, Senate Journal, 1880, p. 790.

COMMITTEE ON RULES.— Debate on adoption of report of committee on rules shall not exceed one hour.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1328.

Rule 1.

COMMITTEE OF THE WHOLE.— Same rules to be observed, as far as applicable, as in the house.

Senate Rule 17.

Like other committees, deriving its authority solely from the resolutions and votes of the house, is in like manner confined within the powers delegated to it, and cannot consider any other matters than those which have been regularly committed to it.

Cushing, par. 1996.

Cannot entertain any matter of privilege, or order any question pending therein to be taken by ayes and nays. Cushing, par. 2000.

The parliamentary rule that committees shall consider *no subjects* that they are not specially ordered to consider, applies to the committee of the whole, as well as to the special, select or standing committees.

Warrington, par. 154.

Cannot punish disorderly conduct, but must report it to the house for its animadversion. Mell, par. 219.

In case any sudden disorder occurs in, the speaker may resume the chair without form.

Cushing, pars. 1984–1985.

After disturbance is quelled chairman resumes his seat.

If dissolved for want of a quorum, the house may, as soon as a quorum is obtained, again proceed.

Cushing, par. 1995.

Has no power to appoint a sub-committee.

Cushing, par. 1919.

Nor to entertain a question of priority.

Cushing, par. 2009.
Croswell, p. 65.

If the enacting clause of a bill is stricken out in, it must be immediately reported. Croswell, p. 65.

A motion to rise and report a bill (except to progress), is not in order until each section and the title have been considered. Like a motion to strike out enacting clause, it presents the opportunity for free discussion of the bill. Croswell, p. 65.

A section having been read and passed, cannot be returned to, to amend, until all the sections have been read.

Amendments proposed by, may be amended or rejected by the house, and matters stricken out by the committee may be restored by the house. Mell, p. 81.

No motion for previous question, or to adjourn, nor to lie on the table, nor to reconsider, can be entertained.
Barclay's Digest, p. 72.
Congressional Manual, 1898, p. 344.

— *Striking out in.*— If, in committee of the whole, an amendment is adopted, and subsequently the paragraph as amended is struck out, the amendment striking out is the only one to be reported to the house, and if the latter is voted down in the house, the first amendment is not thereby revived. Barclay's Digest, p. 11.

— *Granting leave.*— Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again. If leave be refused, the effect is to bring up the subject immediately before the assembly. Mell, par. 223.

Should the committee not have completed the consideration of a bill, and report progress thereon, and leave to sit again be granted, any amendments made to the bill, during its consideration, fall and the bill must be considered in the same shape in which it was when its consideration began.

— *Progress,* report of, does not include any amendments made in the committee, but leaves the bill in the same form as when moved.

The committee of the whole may be discharged from further consideration of a bill and the same referred back to the committee from which it came.
Lt.-Gov. Bruce, Senate Journal, 1905, Vol. 1, p. 511.

Motion to suspend the rules for the purpose of reading, passing and transmitting to Assembly a bill, is not in order when the bill is in the committee of the whole.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1688.

Motion that a bill be reprinted and recommitted is not in order when bill is in the committee of the whole.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 2, p. 1589.

Motion to discharge the committee of the whole from further consideration of a bill can only be made in the order of business of motions and resolutions.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 2, p. 1588.

It does not require unanimous consent to refer a bill to the committee of the whole.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1841.

The order of business having been gone through, motion that the Senate resolve itself into a committee of the whole requires unanimous consent.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 386.

CONCURRENT RESOLUTION.— The Senate has no power to appoint a committee of investigation involving an expenditure, but such committee can only be appointed by concurrent resolution.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 1, p. 806.

CONFERENCE.— A motion to amend the report of a conference committee is not in order.

Lt.-Gov. Hoskins, Senate Journal, 1880, p. 790.

CONFIRMATION.— It is not necessary that a motion for the confirmation of a nomination be made in executive session.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 81.

DEBATE.— Debate on adoption of report of Committee on rules shall not exceed one hour.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1328.

Rule 1.

FLOOR.— A Senator yielding the floor, yields it in its entirety.

Lt.-Gov. Jones, Senate Journal, 1891, p. 152.

JOURNAL.— *Expunging portions of.*— Now, it has sometimes been supposed that if any business has been transacted at the previous meeting of which the minutes purport to be a record, which it is desired to rescind or repeal, the proper method will be to propose an alteration of the minutes before confirmation, by which all reference to such business will be stricken out. But this evidently is an erroneous interpretation of the law, which proceeds from a misunderstanding of the true character of the minutes.

The minutes of a body are supposed to be, and ought always to be, "a just and true record of all things proper to be written." They constitute the journal of

the proceedings of the meeting to which they refer, as those proceedings actually occurred. If altered by the expurgation of any part, they cease to be a record.

It has occurred in the proceedings of the English parliament and the American congress that portions of the journal which contained the record of transactions which had become obnoxious, have been expunged by a vote taken subsequent to their confirmation; and these precedents, it is supposed, would authorize a body to rescind or annul, or even to expunge from its minutes any particular portion.

But the question on so rescinding, annulling, or expunging must be made after the minutes have been approved. The first question, and the only question in order after the minutes have been read is, "Shall the minutes stand approved?" And the alterations or amendments to be suggested before this question is put, are not to change the record of what has really occurred, but to make the record just and true.

The decision has been made in congress that "when a member's vote is *incorrectly* recorded, it is his right on the next day, while the journal is before the house for its approval, to have the journal corrected accordingly. But it is not in order to change a *correct record* of a vote given under a misapprehension."

Mackey's Parliamentary Law, pp. 228, 229, 230.

The approval of the journal is the transaction of business, a proceeding which affects the regularity and validity of the proceedings of the previous day. The question as to whether or not the proceedings of the house

are correctly recorded is a matter under the control of the house itself. Congressional Manual, 1898, p. 420.

Nothing is in order until after the journal has been read. Lt.-Gov. Jones, Senate Journal, 1889, p. 223.

LEGISLATIVE DAY.— The Legislative day does not expire at 12 o'clock midnight.

Lt.-Gov. Jones, 1891, p. 386.

MESSAGE FROM ASSEMBLY.— Assembly bill amending the charter of a city and sent to the Senate for concurrence may be committed to the committee of the whole.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 71.

MESSAGE FROM GOVERNOR.— Communication from the Governor, when may be received.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 1, p. 382.

Rule 1.

But see Constitution, art. 3, § 10.

MOTIONS.— Adjourned to a day certain is debatable and amendable by naming another day.

Croswell, p. 48.

Cushing's Law and P., par. 1523.

Commit, not amendable

Speaker Husted, Assembly Journal, 1890, p. 762.

Postpone indefinitely, not amendable Cros. 40.

Postpone indefinitely is already in its simplest form and is not amendable. Cushing, par. 1523.

When one of the privileged motions is made, none of those which stand behind can be made.
Cushing, par. 1525.

Indefinite postponement suppresses the subject during the session. Cushing, par. 1386.
Roberts, R. O., 160, 59.

Strike out and insert shall be indivisible.
Reed's Rules, p. 101.

A motion to lay on the table being decided in the affirmative, the principal motion, together with all the other motions, subsidiary and incidental, connected with it, is removed from the assembly until it is again taken up. Cushing, pars. 1449–1524.
Mell, p. 37.

When taken from the table it revives and stands in the exact form and with all the appendages pertaining to it at the time the motion to lie on the table prevailed.
Mell, p. 37.

A motion to lay on the table, if carried, carries with it the subject-matter before the house, but a motion to table an appeal from the decision of the chair upon a point of order carries only the appeal.
Speaker Malby, Assembly Journal, 1894, p. 2678.

A maker of a motion, though he can vote against it, cannot speak against his own motion. Roberts, p. 84.

Motion is not in possession of the house until it has been stated by the presiding officer.

Lt.-Gov. Woodruff, Senate Journal, 1898, p. 135.

Motion can be charged or modified by its introducer at any time before the house has taken such action upon it as places it within the control of the house and beyond the control of the introducer.

Congressional Manual, 1898, p. 451.

A motion may be in order notwithstanding the fact that the same motion was made and lost some weeks previous.

Lt.-Gov. Bruce, Senate Journal, 1905, Vol. 2, p. 1492. See Senate Journal, 1891, p. 177.

A motion to discharge the committee on finance from further consideration of a bill involving an appropriation and refer same to another committee is not in order until the committee to which it has been referred has had an opportunity to consider it.

§ **23,** Legislative Law.

Lt.-Gov. Bruce, Senate Journal, 1905, Vol. 1, p. 926.

A motion requesting leave for a committee to meet during a session can only be made in the order of business of motions and resolutions.

Lt.-Gov. Higgins, Senate Journal, 1904, Vol. 2, p. 902.

A motion to substitute Assembly bill for Senate bill identical therewith may be made in order of third

reading or in committee of the whole upon a vote of a majority of the Senate.

Lt.-Gov. Woodruff, Senate Journal, 1902, Vol. 2, p. 1423.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1256.

A motion to discharge a committee from further consideration of a bill is not in order unless the committee to which it was referred has had an opportunity to consider it.

Lt. Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1309.

A motion to suspend the rules for the purpose of reading, passing and transmitting to the Assembly a bill is not in order when the bill is in the committee of the whole.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1688.

Notice that at some future day a motion would be made to suspend rules may be received under order of business of third reading of bills.

Mr. Ellsworth, Senate Journal, 1900, Vol. 2, p. 1232.

A motion that a bill be reprinted and recommitted is not in order when bill is in the committee of the whole.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 2, p. 1589.

A motion to reconsider a vote by which a bill was lost cannot be entertained if more than three days has elapsed since vote was taken.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1415; Rule 30.

The order of business having been gone through, motion that the Senate resolve itself into a committee of the whole requires unanimous consent.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 386.

A roll call having been ordered, motion for reading of bill in full is not in order.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 302.

A motion was decided, out or order in consequence of a similar motion having been voted down.

Lt.-Gov. Jones, Senate Journal 1891, p. 177.

Motion to discharge committee from further consideration of a bill can only be made under order of business of reports of committees or motions and resolutions.

Lt.-Gov. Sheehan, Senate Journal, 1892, p. 91.

A motion to discharge the committee of the whole from further consideration of a bill can only be made in the order of business of motions and resolutions.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 2, p. 1588.

A motion cannot be withdrawn after stated by the chair if objection is made except upon the motion of the mover. Reed's Rules, § 139.

Summary of Motions:

A motion to adjourn is not debatable.

A motion to fix the time to which to adjourn is not debatable if made when another question is before the assembly, and takes precedence of the motion to adjourn.

An amendment to an amendment cannot be amended.

The rules canot be amended only on one day's notice being given, except by report of committee on rules, which is adopted by a majority vote.

An appeal relating to indecorum is not debatable, cannot be amended and is in order when another has the floor.

An appeal in all other cases cannot be amended and is in order when another has the floor.

A call to order is not debatable, cannot be amended and is in order when another has the floor.

A motion to extend the limits of debate is not debatable.

Leave to continue speaking after indecorum is not debatable and cannot be amended.

A motion to lie on the table is not debatable and cannot be amended.

A motion to postpone to a certain time admits of but limited debate, only on postponement.

A motion to postpone indefinitely opens the main question, but cannot be amended.

A motion for the previous question is not debatable and cannot be amended.

A resolution relating to priority of business is not debatable.

A motion to reconsider a debatable question opens the main question, cannot be amended nor reconsidered.

A motion to reconsider an undebatable question is not debatable, cannot be amended nor reconsidered.

A motion to rise in committee of the whole is not debatable and cannot be amended nor reconsidered.

A motion to make, postpone or rescind a special order requires a two-thirds vote.

A motion to suspend the rules requires a majority vote, and is not debatable nor amendable, cannot be laid on the table nor postponed indefinitely, nor can the motion to suspend be reconsidered.

A motion to suspend the rules after notice has been given requires a majority vote of all the senators elected.

Lt.-Gov. Saxton, Senate Journal, 1896, p. 551.

A motion to take from the table is neither debatable nor amendable.

A motion to take up a question out of its proper order requires a two-thirds vote.

A motion to suspend the rules can be made either under the order of business in which the matter proposed to be advanced stands, or under the head of motions and resolutions.

Speaker Cole, Legislative Record, 1888, p. 500.

Motion to suspend order of business can only be made under the order of motions and resolutions.

Lt.-Gov. Woodruff, Senate Journal, 1897, p. 1325.

Motion to recall a bill from the Governor is not debatable. Speaker Cole, Assembly Journal 1889, p. 1552.

Motion to recall a bill from the Governor, being a privileged motion, can only be made by the member who introduced the bill, except under the head of motions and resolutions.

Speaker Bush, Assembly Journal, 1892, p. 682.

NEW MATTER.— Every bill amending existing law upon its introduction and if reprinted must in the body of the bill have all new matter underscored before it can be properly before the Senate.

Lt.-Gov. Woodruff, Senate Journal, 1901, Vol. 2, p. 1540; Rule 22.

NOMINATION.— It is not necessary that a motion for the confirmation of a nomination be made in executive session.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1. p. 81.

NOTICE.— Notice that at some future time motion would be made to suspend the rules, may be made under order of business of reports of committees.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1618.

Notice that at some future day motion would be made to suspend rules may be received under order of business of third reading of bills.

Mr. Ellsworth, Senate Journal, 1900, Vol. 2, p. 1232.

Resolution amending existing rules offered by a senator cannot be received unless one day's notice in writing be given of intention to amend.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 1, p. 447, Rule 44.

NOTICE OF MOTION.— A notice of motion can be given under the order of motions and resolutions, or under the order of business in which the matter affected by the resolution stands.

ORDER IN DEBATE.— It is a breach of order to speak impertinently or beside the question superfluously or tediously. To reflect on any determination or proceeding of the house, unless with a view to or in support of a motion to rescind. To allude to a member by name or to indulge in personalities by arranging a member's motives in his official course or to allude to what has been said in the other house, or to the particular votes or majorities given on any measure there, or to speak disrespectfully of the other branch. Croswell, p. 34.

ORDER.— *Questions of.*— Questions of order may be of two kinds: *First,* those that relate to general principles; and, *second,* those that have a personal bearing. As an example of the first may be given, the question raised whether, on the motion to indefinitely postpone, it will be in order to discuss the merits of the main proposition; as an example of the second, the case when one raises the point as to whether the remarks of a member are not irrelevant and violative of order. In the first case, debate on the point of order is admissible;

in the second, it is out of order. It is worthy of special note that all questions of order of a personal character, whether on an appeal from the decision of the chair or not, are to be decided without debate. Mell, par. 154.

The presiding officer may speak on points of order in preference to other members, and he decides all questions of order subject to appeal, and no other business is in order till the question on the appeal has been decided. Warrington, p. 5.

When a question of order arises in the course of any other proceeding it supersedes the further consideration of the subject out of which it arises until that question is disposed of. Cushing, par. 1459.

It is irregular to raise one point of order on another, so that there may be two questions of order pending at once. Cushing, par. 1463.

ORDER OF BUSINESS.— When gone through with can only be resumed by unanimous consent.

Lt.-Gov. Saxton, Senate Journal, 1896, p. 386.

— Motion to suspend can only be made in order of motions and resolutions.

Lt.-Gov. Woodruff, Senate Journal, 1897, p. 1325.

PARLIAMENTARY LAW.— Parliamentary law is a branch of the common law and as well settled as any other.

Cushing's L. A. Introduction, p. 8.

POSTPONEMENT.— *To a time definite.*— On a motion to postpone to a time definite, it is not in order to speak

to the merits of the question thus proposed to be postponed. It will not be out of order, though, to speak strictly to the proposition to postpone, and to show why one time is preferred to another. The chair should hold speakers rigidly to these points. In congress, *all* debate is interdicted. Mell, par. 93.

This motion is sometimes abusively made by designating a day known to be beyond the session. It becomes then a motion to suppress, and should be treated by the chair as though it had been a motion for indefinite postponement. Mell, par. 94.

— *Indefinite.*— The motion for indefinite postponement lays open the whole question for discussion, on the principle that whatever motion proposes to make a final disposition of a question brings up for discussion all its merits. Nor is even the previous question an exception to this. That, if sustained, does not make a final disposition of the pending proposition; for it compels a direct vote subsequently for or against the main question. To lie on the table, and to postpone to a time definite, are not debatable, because they only temporarily defer measures. Debate, therefore, may be withheld until they come again before the assembly in order.
Mell, par. 110.

The motion to indefinitely postpone cannot be amended. It has been held by some writers in parliamentary law that it can be amended by striking out the word "indefinitely," and inserting a definite day; but this is, by amendment, to transform one form of a ques-

tion into another, which is clearly inadmissible. "A motion to suppress" cannot be, by amendment, transformed into "a motion to defer." Mell, par. 111.

When a motion to indefinitely postpone prevails, the proposition so postponed cannot be renewed during the session. Mell, par. 112.

PRESIDENT.— The president may suggest propositions or motions relating to matters of form and the proper course of proceeding or order of business.

Cushing's L. A., § 301.

The president when he gives the casting vote may give the reasons by which his vote is governed.

Cushing's L. A., § 311.

PRESIDENT, TEMPORARY.— A majority of all senators elected not necessary to election of temporary president of Senate.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 11.

Const., art. 3, § 10.

PREVIOUS QUESTION.— When a bill, having been engrossed and read a third time, is before the house for consideration, the main question is on its passage.

Const., art. 3, § 15.

The motion for the previous question may be made to suppress any other original motion, but it cannot be put upon an amendment or any of the merely subsidiary motions, as to commit or postpone.

Cushing, pars. 1414–1415.

When ordered, the main question must be put immediately without debate, amendment or delay.
Cushing, par. 1418.

Again, "must be put without any further debate, alteration or delay. Cushing, par. 1424.

A motion to adjourn is not in order when the main question is ordered. Croswell, p. 48.

A motion may be withdrawn after the previous question is ordered, provided it has not been amended, or provided that no amendment has been moved to it, so as to take it out of the control of the mover.
Warrington, p. 36.

Motions to commit or postpone are cut off when the previous question is ordered. Warrington, p. 57.
See page 513.

PRIVILEGE.— *Question of.*—Which supersede all others for the time being, except that of adjournment, are those which concern the rights and privileges of the assembly, or of its individual members, as for example, when the proceedings of the assembly are disturbed or interrupted, whether by strangers or members, or where a quarrel arises between two members, and in these cases requiring immediate action, it can interrupt a member's speech. Cushing, p. 81.
Roberts, p. 34.

Any matter or privilege, affecting the assembly itself, or any of its members, of which the assembly ought to have instant information.

In such cases a member interrupted when speaking is obliged to yield the floor. Cushing, par. 1499.

A question of privilege is always in order. Whenever a member arises and says: "I rise to a question of privilege," the question must first be stated. The presiding officer will decide whether it is or is not such a question. If he decides that it is, then the consideration of any other business whatsoever, that may at that time be before the body must be suspended until the question of privilege is disposed of. And this disposition of the question may be either by entertaining it at once, and deciding it on its merits, or by any other of the modes of disposition to which any other question is subject. It may be ordered to lie on the table, be postponed definitely or indefinitely, or be committed for investigation and report to a committee. In the last case the character of a question of privilege adheres to the report, the presentation of which will always be in order, and will take precedence of all other business. But it does not follow that the immediate consideration of, and final action on the report must be had, for the report, like the question to which it refers, is subject to the operation of any of the subsidiary motions, and may, like any other report, be laid on the table, postponed or recommitted.

Questions of privilege, it must be remembered, are entitled to presentation at any time, for in this consists their privilege; but that privilege does not extend to their consideration. Having been once presented they

become, as to the time and manner of their consideration, subject to the rules which affect all other questions. Mackey's Parliamentary Law, p. 137.

When questions of privilege arise that are admissible to be entertained during the discussion of a question, they supersede the question pending at the time, together with all subsidiary or incidental ones, and must be first disposed of. Cushing, pars. 1500, 1501.

—*Personal explanation not a.*—A personal explanation is not a matter of privilege. It can be made only by leave of the assembly implied or expressed. Roberts, p. 168.

—*Previous question applies to.*—The previous question applies to a question of privilege equally with any other question. Barclay's Digest, p. 173.

Privileged questions.—In the Senate are as follows, and have precedence in the order stated, viz.: 1. For an adjournment. 2. For a call of the Senate. 3. To lay on the table. 4. To postpone indefinitely. 5. To postpone to a certain day. 6. To commit to a standing committee. 7. To commit to a special committee. 8. To commit to the committee of the whole. 9. To amend. In the Assembly, these motions are: 1. To adjourn. 2. A call of the House. 3. For the previous question. 4. To lay on the table. 5. To postpone to a day certain. 6. To commit. 7. To amend. 8. To postpone indefinitely. See also Senate Rule 1, page 301. See page 501.

PROGRESS.—A motion that the committee of the whole arise and report progress upon a bill is in order at any time, and shall be decided without debate.

A report of progress on a bill does not include any amendments made in the committee, but leaves the bill in the same form as when moved.

QUESTION.—*When divisible.*— Jefferson says: "A question to be divisible must comprehend points so distinct and entire, that one of them being taken away the other may stand." Warrington, p. 49.

If a motion be made to insert or strike out a section, then a motion to amend it; the motion to amend must be first put. Warrington, p. 26.

—*Division of.*—A division of the question is not in order on a motion to commit with instructions, or on the different branches of instructions.

A motion to strike out and insert is not divisible.
Reed's Rules, p. 101.

QUESTION OF PRIVILEGE.—A false account in a public newspaper of what took place in the house on a certain occasion is a question of personal privilege.
Cushing's L. A., sec. 1503.
Cong. Globe, Vol. 13, p. 194.

Explaining a charge in a public newspaper against a member is not a question of personal privilege.
Cushing's L. A., sec. 1504.

A personal explanation is not a question of privilege.
Cushing's L. A., sec. 1504.
Cong. Globe, Vol. 20, p. 108.

QUORUM.— No subject of parliamentary law has attracted such wide attention in recent years as that of quorum, and the various rulings thereon. Section 10 of article 3 of the Constitution of the State of New York provides that a majority of each house shall constitute a quorum to do business, and section 20 of the same article provides that all bills appropriating the public moneys or property for local or private purposes shall receive the assent of two-thirds of all the members elected, and section 25 of the same article further provides that on the final passage, in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

It was under the provisions of section 25 that Lieut.-Governor Hill held (Senate Journal, 1883, p. 360) that the constitutional requirements therein set forth were entirely satisfied by the presence of members even if they did not vote, and accordingly he directed the Clerk of the Senate to put down the names of certain Senators as present and not voting, and in so ruling the Chair stated "The parliamentary question presented is whether this bill has been duly passed. It has received the votes of a majority of all the Senators elected to the Senate. It has received all the affirmative votes which

the Constitution requires to pass such a bill. The section does not provide that three-fifths of all the Senators elected shall vote for the bill or that such a number shall vote at all upon the bill, but simply that such a number shall be present in order to constitute a quorum. The presence or absence of Senators is a physical fact known to the President and Clerk. It requires only the exercise of their senses to determine the question. If a Senator is in fact present, his refusal to vote, which is a violation of his duty, does not make him absent in a parliamentary sense. He can be counted by the President and Clerk as one of three-fifths necessary to constitute a quorum. The President of the Senate is required to certify as to the passage of all bills, and to certify the fact whether they are passed by the required number and with a constitutional quorum present. He may obtain that information as to the number of Senators who are present either from his own observation or from the tally list if that shows it, or from the journal. He is bound to know and certify whether there was present the requisite quorum, and as his certificate is the evidence of such fact, the question presented is peculiarly in his own province."

The substance of this ruling was made by Mr. Speaker Reed in the Fifty-first Congress, and was later declared constitutional by the United States Supreme Court in the case of the *United States* v. *Ballin,* 114 U. S. Sup. Ct. Rep. 1. These rulings and decisions were followed by Lieut.-Govs. Jones, Sheehan and Saxton, and are now accepted without question. Senate Rule 33 expressly provides this method of ascertaining a quorum.

A quorum is presumed to be present, if no member raises the question. The method of securing a quorum is fully set forth under the heading "Call of the House."

Communication from the Governor may be received although a quorum is not present.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 1, p. 382. Rule 1, p. 31. But see Constitution, art. 3, sec. 10.

A quorum is not necessary in order to take a recess.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 1, p. 115.

A call of Senate may be ordered at any time but such call shall not be in order after the third reading of a bill has been completed; nor after the motion to close debate has been ordered pursuant to Rule 33, unless it shall appear by actual count by the President that a quorum is not present.

Lt.-Gov. Jones, Senate Journal, 1891, p. 381; Rule 47.

Senators present and not voting may be counted present for the purpose of constituting a quorum.

Lt.-Gov. Jones, 1891, p. 854; Rule 33.

RECESS.—A quorum is not necessary in order to take a recess.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 1, p. 115.

— *When not in order.*— Pending a motion to suspend the rules, so as to take an immediate vote on a proposition, a motion for a recess is not in order.

Barclay's Digest, p. 207.

Pending a call of the house a motion for recess is not in order.

RECONSIDERATION.—*The right to move a.*—Where a vote is not taken by ayes and nays, and consequently no record made of each member's vote, it is the well-settled practice to permit *any* member to move a reconsideration.

—*When in order.*—It is in order *at any time,* even when a member is on the floor, or the highest privileged question is pending, on the same or succeeding day, to move a reconsideration, and have it entered, but it cannot be taken up and considered while another question is before the house.

—*If papers are out of the house.*—A motion to reconsider, if made in time, may be entertained, notwithstanding the papers connected with the original proposition have gone out of the possession of the house.

It is not in order to move a reconsideration of a vote sustaining a decision of the chair, after subsequent action has resulted from such decision which it is impossible for the house to reverse.

Where a motion to reconsider has been once put and decided, it is not in order to repeat the motion.

A motion to reconsider a vote laying a motion to reconsider on the table, is not in order.

Barclay's Digest, p. 198.
Roberts, p. 62.

Motion to reconsider can be made by any member regardless of how he voted upon the question sought to be reconsidered.

Speaker O'Grady, Assembly Journal, 1897, p. 2789.

The Senate Rules provide that a majority of all the Senators elected shall be required to reconsider the vote on the final passage of a bill appropriating public moneys or property, or creating, continuing, altering or renewing any body politic or corporate, but all other bills which may have been lost may be reconsidered by a majority of the Senators present and voting.

Rule 23, Clerk's Manual, 1906, p. 610.

— *Cannot reconsider*:

A motion to lay on the table.

A motion to take from the table.

A motion to adjourn.

Warrington, p. 45.

A motion to suspend the rules for a particular purpose, when lost cannot be reconsidered.

Cushing, p. 487.

Held that such motion could be reconsidered.

Lt.-Gov. Saxton, Senate Journal, 1896, p. 551.

Lt.-Gov. Woodruff, Senate Journal, 1902.

A motion for the previous question.

Assembly Rules, Rule, No. 34.

A motion to reconsider is not amendable.

Previous question may be moved to suppress any other original motion, but not on an amendment, on any other merely subsidiary motion, as to commit or postpone. Cushing, p. 556.

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When the previous question is moved on the motion to reconsider the previous question applies only to that.
Warrington, p. 36.

Only vote of majority of those present voting are required to reconsider vote by which motion to suspend the rules was lost.
Lt.-Gov. Woodruff, Senate Journal, 1902, Vol. 2, p. 1619; Rule 23.

The same number of votes are necessary to reconsider the vote by which a bill is passed as are necessary to the final passage of the bill.
Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 2, p. 1319; Rule 23.

Motion to reconsider vote by which a bill was lost cannot be entertained if more than three days have elapsed since vote was taken.
Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1415; Rule 30.

REPORT.— Report of Committee on Rules and consideration of its report always in order and no other motion in order until vote of Senate is had thereon.
Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 655; Rule 1, p. 30.

It is not in the power of the Senate to recommit a report of a committee with instructions to report anything contrary to the facts.
Lt.-Gov. Woodruff, Senate Journal, 1898, Vol. 1, p. 230.

A majority of committee not concurring in report, the report must be rejected.

Lt.-Gov. Woodruff, Senate Journal, 1898, Vol. 2, p. 995.

Report of the Committee on Rules, if regularly presented and signed by a majority of the Committee must be received.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 551.

A motion to amend the report of a conference committee is not in order.

Lt.-Gov. Hoskins, Senate Journal, 1880, p. 790.

Minority of the Senate or standing committee cannot submit report except upon leave of the Senate.

Manual, pp. 658–660.
Cushing's L. A. sec. 1968.
Reed's Rules, sec. 75.

—*Minority.*— It sometimes happens that one or more members of a committee will dissent from the views of the majority, and that they will naturally desire to express their antagonistic opinions in a written paper. This paper is usually called a "minority report." But the term is an inaccurate one, since the decision of parliamentary law is, that the minority of a committee cannot make a report, a minority not being a committee. Such reports are not known in the British parliament, but in congress, by a courtesy of the house, they are on motion received with the report of the majority and are printed, postponed, or considered in

the same manner. Their effect seems to be to serve as a basis for amendments to be moved in the resolutions proposed by the majority. It has been usual, although not strictly parliamentary, in popular assemblies, when there are two reports, to move that the report of the minority be adopted. Such a motion is only admissible on the ground that it is to be viewed as a motion for a substitute, by way of amendment to the report of the majority. If such a motion is adopted, its effect is the change of the character of the majority report, and the adoption of the report as so amended. But at this stage a motion might be made to lie on the table, to commit, or to postpone. In a word, the report of a minority can only be treated as any other amendment to that of the majority.

Mackey's Parliamentary Law, pp. 190 and 191.

Minority of a committee has no right to make a report, but can only express its views by dissenting from the report of the majority.

Speaker Fish, Assembly Journal, 1896, p. 1390.

The common practice is to permit the minority to submit their views in writing, which are usually considered with the majority report. When such views are accompanied by a resolution or bill, such resolution or bill is not thereby brought before the house for its action, but must be submitted by some member

Congressional Manual, 1838, p. 337.

So held by Lt.-Gov. Woodruff, Senate Journal, 1898, p. 240.

One more observation is necessary. The report of the minority does not, I think, so adhere, in parliamentary phrase, to that of the majority, that a vote to lay the former on the table would carry the latter with it. It is one of the exceptions to the general rule, that whatever adheres to the subject of a motion goes to the table with it.

Mackey's Parliamentary Law, pp. 190 and 191.
Speaker Fish, Assembly Journal, 1896, p. 1390.
Lt.-Gov. Woodruff, Senate Journal, 1898, p. 230.

REPORT OF COMMITTEES.— No meeting of committee having been held, a report of said committee cannot be properly presented to the Senate.

Lt.-Gov. Saxton, Senate Journal, 1895, Vol. 1, p. 466.

REPORT OF COMMITTEE ON RULES.—Debate on adoption of report of Committee on Rules shall not exceed one hour.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1328; Rule 1.

ROLL CALL.—A roll call having been ordered, motion for reading of bill in full is not in order.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 302.

If the decision of the chair is questioned by a Senator immediately, even though the chair has already made a decision then a new roll call should be had or the Senate divided.

Cushing's L. A., secs. 386–403.

It is too late if any new motion is made or a member not in the house when the vote was taken comes in. The decision of the chair cannot be questioned where the voices were given only on one side.

Secs. 386, 387.

RULES.—A bill must be read in full upon each reading if any Senator so requests, unless the Rules are suspended.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 669; Rule 18.

Report of Committee on Rules and consideration of its report always in order and no other motion in order until vote of Senate is had thereon.

Lt.-Gov. Higgins, Senate Journal, 1903, Vol. 1, p. 655; Rule 1.

Suspension of the rules for the purpose of reading and passing a bill does not simply place the bill in position for advancement but advances it.

Lt.-Gov. Woodruff, Senate Journal, 1902, Vol. 2, p. 1375.

Lt.-Gov. Chanler, Senate Journal, 1907, p. 2148.

Only vote of majority of those present voting are required to reconsider vote by which motion to suspend the rules was lost.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1619; Rule 23.

Notice that at some future time motion would be made to suspend the rules, may be made under order of business of Reports of Committees.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1618.

Motion to suspend the rules for the purpose of reading, passing and transmitting to Assembly a bill, is not in order when the bill is in the committee of the whole.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1688.

Notice that at some future day motion would be made to suspend rules may be received under order of business of third reading of bills.

Mr. Ellsworth, Senate Journal, 1900, Vol. 2, p. 1232.

Resolution amending existing rules offered by a Senator cannot be received unless one day's notice in writing be given of intention to amend.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 1, p. 447; Rule 44.

Majority vote of the Senate is required to suspend rule of Senate.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 551; Rule 44.

Report of the committee on rules, if regularly presented and signed by a majority of the committee, must be received.

Lt.-Gov. Saxton, Senate Journal, 1896, Vol. 1, p. 551.

A resolution that a special session of the Senate be held at 4 P. M., February 12th, for the purpose of considering the amendments of Rule 3 of the Senate, and that the question of amending the same be taken without debate at 4 o'clock and 10 minutes P. M.

It was decided that the resolution applies to the previous question and requires one day's notice under the rules of Senate; and the resolution out of order.

Lt.-Gov. Jones, Senate Journal, 1891, p. 182.

Debate on adoption of report of committee on rules shall not exceed one hour.

Lt.-Gov. Woodruff, Senate Journal, 1897, Vol. 2, p. 1328; Rule 1.

— *To suspend.*— If a motion to suspend the rules for a particular purpose is decided in the negative, there can be no reconsideration of the vote, nor is any second motion to suspend the rules for the same purpose in order on the same day unless the motion is varied in its terms, or is for a different time, or unless some intervening business takes place; but a second suspension for the same purpose is in order on a different day, and a vote to suspend the rules may be reconsidered.

Cushing, p. 1487.

The practice in the Senate is in contradiction of the foregoing. See Senate Journal, 1896, p. 551.

A motion to suspend the rules is not debatable.

Mell, par. 163.

A motion to suspend the rule can be made either under the order of business in which the matter proposed to be advanced stands, or under the head of motions and resolutions.

Speaker Cole, Legislative Record, 1888, p. 500.

When a fixed order of business is established by the rules, the making of a special order is in effect a suspension of the rules, and can only be made by suspending the rules. Cushing's L. A., secs. 1508, 1512.

SENATE.— The Senate has no power to appoint a committee of investigation involving an expenditure, but such committee can only be appointed by concurrent resolution.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 1, p. 806.

The Senate has no power to amend the report of a committee, but can only dissent or agree to the report.

Lt.-Gov. Woodruff Senate Journal, 1899, Vol. 1, p. 856.

Lt.-Gov. Woodruff, Senate Journal, 1899, Vol. 2, p. 1922.

It is not in the power of the Senate to recommit a report of a committee with instructions to report anything contrary to the facts.

Lt.-Gov. Woodruff, Senate Journal, 1898, Vol. 1, p. 230.

A call of Senate may be ordered at any time, but such call shall not be in order after the third reading of a bill has been completed; nor after the motion to close debate has been ordered pursuant to Rule 33, unless it shall appear by actual count by the President that a quorum is not present.

Lt.-Gov. Jones, Senate Journal, 1891, p. 381; Rule 48.

SENATOR.— Senators present and not voting may be counted present for the purpose of constituting a quorum.

Lt.-Gov. Jones, 1891, page 854; Rule 33.

A Senator yielding the floor, yields it in its entirety.

Lt.-Gov. Jones, Senate Journal, 1891, p. 152.

SPECIAL ORDERS.— To make a special order requires a two-thirds vote. The same to postpone and rescind.

Roberts, p. 97.

When there are two special orders for the same day, the first must be disposed of before the second is taken up. Warrington, p. 72.

SPECIAL SESSIONS.— When the house is in special session for a special purpose no other business is in order, even by unanimous consent.

This principle is recognized in the Constitution, article 4, section 4, which reads: At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration.

SUBSTITUTION OF BILLS.— Motion to substitute Assembly bill for Senate bill identical therewith may be made in order of third reading or in committee of the whole, upon a vote of a majority of the Senate.

Lt.-Gov. Woodruff, Senate Journal, 1902, Vol. 2, p. 1423.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1256; Rule 16.

SUSPENSION OF RULES.— Notice that at some future time motion would be made to suspend the rules may be made under order of business of reports of committees.

Lt.-Gov. Woodruff, Senate Journal, 1900, Vol. 2, p. 1618.

A resolution that a special session of the Senate be held at 4 P. M., February 12th, for the purpose of considering the amendments of Rule 3 of the Senate, and that the question of amending the same be taken without debate at 4 o'clock and 10 minutes P. M.

It was decided that the resolution applies to the previous question, and requires one day's notice under the rules of Senate, and the resolution out of order.

Lt.-Gov. Jones, Senate Journal, 1891, p. 182.

TABLE.— *Negative and affirmative vote to lie on the.* —A negative vote on a motion to lie on the table may be reconsidered.

If a motion to reconsider be laid on the table, the latter vote cannot be reconsidered.

Barclay's Digest, p. 134.

VOTES.— *Change of.*— In a legislative body no member is allowed, under any circumstance, to vote or change his vote after the result is announced by the chair. Under such circumstances, a member, if he desires to have his opinion known, may, if allowed, have a statement put upon the journal as to the way he would have voted. Warrington, p. 25.

— *Tie.*— When there is a tie vote the motion fails unless the chair gives his vote in the affirmative. Where his vote will make a tie, he can cast it, and thus defeat the measure. Roberts, p. 94.

Explanation of Table.

The table is intended to answer the question in the vertical column during the pendency of the motion in the horizontal column, *e. g.:* Amend. Amend (can you amend an amendment)? Yes.. Adjourn. Amend (can you amend a motion to adjourn)? No, etc.

The x means yes; the o, no. The figures refer to the foot notes: (The Reviser is indebted to the late Hon. Thomas B. Reed and Messrs. Rand, McNally & Co., his publishers, for permission to use the following table, with such changes as were made necessary by difference in procedure in the House of Representatives and the Legislature.)

	Amend.	Commit.	Debatable.	Division of question.	Postpone to day certain.	Postpone indefinitely.	Previous question.	Reconsideration.
Adjourn	o	o	o	o	o	o	o	o
Adjourn, to fix time to which	x	o	x	o	o	o	o	x
Amend	x	x	x	x	o	o	o[2]	x
Appeal	o	o	x[1]	o	o	o	o	o
Call of the House	o	o	o	o	o	o	o	o
Commit to Committee of the Whole	x	o	o	o	o	o	o	x
Commit to a Select Committee	x	o	o	o	o	o	o	x
Commit to a Standing Committee	x	o	o	o	o	o	o	x
Division of question	x	o	o	o	o	o	o	o[4]
Lay on table	o	o	o	o	o	o	o	x
Postpone to a day certain	x	o	x[2]	o	o	o	o	x
Postpone indefinitely	o	o	x[3]	o	o	o	o	x
Previous question	o	o	o	o	o	o	o	o
Recess	x	o	x	o	o	o	o	o
Rules, suspension of	o	o	o	o	o	o	o	o

MODIFICATIONS.

1. But a motion to lay an appeal on the table will cut off debate, and if carried will sustain the chair.
2. Does not open the main question to discussion.
3. Opens main question to discussion, because decision in the affirmative is a final negative to the whole proposition.
4. A negative vote to lay on the table may be reconsidered.

CONSTITUTION OF THE STATE OF NEW YORK

As Proposed by the Constitutional Convention, September 29, 1894, at Albany, N. Y., and Adopted by the People of the State, November 6, 1894,* and as subsequently amended.

[In force on January 1, 1909.]

ARTICLE I.

§ 1. Persons not to be disfranchised.
2. Trial by jury.
3. Freedom of worship; religious liberty.
4. Habeas corpus.
5. Excessive bail and fines.
6. Bill of rights.
7. Compensation for taking private property; private roads; drainage of agricultural lands.
8. Freedom of speech and press; criminal prosecutions for libel.
9. Right to assemble and petition; divorces; lotteries, pool-selling and gambling, laws to prevent.
10. Escheats.
11. Feudal tenures abolished.
12. Allodial tenures.
13. Leases of agricultural lands.
14. Fines and quarter-sales abolished.
15. Purchase of lands from Indians.
16. Common law and acts of the colonial and state legislatures.
17. Grants of land made by the king of Great Britain since 1775; prior grants.
18. Damages for injuries causing death.

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ARTICLE II.

§ 1. Qualification of voters.
2. Persons excluded from right of suffrage.
3. Certain occupations and conditions not to affect residence.
4. Registration and election laws to be passed.
5. Manner of voting.
6. Registration and election boards to be non-partisan, except at town and village elections.

ARTICLE III.

§ 1. Legislative powers.
2. Number and terms of senators and assemblymen.
3. Senate districts.
4. Enumerations and reapportionments.
5. Apportionment of assemblymen; creation of assembly districts.
6. Compensation of members.
7. Civil appointments of members void.
8. Persons disqualified from being members.
9. Time of elections.
10. Powers of each house.
11. Journals; open sessions; adjournments.
12. Members not to be questioned for speeches.
13. Bills may originate in either house.
14. Enacting clause of bills.
15. Manner of passing bills.
16. Private and local bills not to embrace more than one subject.
17. Existing law made applicable to be inserted.
18. Cases in which private and local bills shall not be passed; restrictions as to laws authorizing street railroads.
19. Private claims not to be audited by legislature.
20. Two-thirds bills.
21. Appropriation bills.
22. Restrictions as to provisions in the appropriation or supply bills.
23. Certain sections not to apply to commission bills.
24. Tax bills to state tax distinctly.
25. When ayes and nays necessary, three-fifths to constitute quorum.
26. Boards of supervisors.
27. Local legislative powers.
28. Extra compensation prohibited.
29. Prison labor; contract system abolished.

ARTICLE IV.

§ 1. Executive power.
2. Qualifications of governor and lieutenant-governor.
3. Election of governor and lieutenant-governor.
4. Duties and powers of governor; compensation.
5. Reprieves, commutations and pardons to be granted by governor.
6. When lieutenant-governor to act as governor.
7. Qualifications and duties of lieutenant-governor; succession to the governorship.
8. Salary of lieutenant-governor.
9. Bills to be presented to governor; approval; passage of bills by legislature if not approved.

ARTICLE V.

§ 1. State officers
2. First election of state officers.
3. Superintendent of public works; appointment; powers and duties.
4. Superintendent of state prisons; appointment; powers and duties.
5. Commissioners of the land office; of the canal fund; canal board.
6. Powers and duties of boards.
7. State treasurer; suspension by governor.
8. Certain offices abolished.
9. Civil service appointments and promotions.

ARTICLE VI.

§ 1. Supreme court; how constituted; judicial districts.
2. Judicial departments; appellate division, how constituted; governor to designate justices; reporter; time and place of holding courts.
3. Judge or justice not to sit in review; testimony in equity cases.
4. Terms of office; vacancies, how filled.
5. City courts abolished; judges become justices of supreme court; salaries; jurisdiction vested in supreme court.
6. Circuit courts and courts of oyer and terminer abolished.
7. Court of appeals.
8. Vacancy in court of appeals, how filled.

9. Jurisdiction of court of appeals.
10. Judges not to hold any other office.
11. Removal of judges.
12. Compensation; age restriction; assignment by governor.
13. Trial of impeachments.
14. County courts.
15. Surrogates' courts; surrogates, their powers and jurisdiction; vacancies.
16. Local judicial officers.
17. Justices of the peace; district court justices.
18. Inferior local courts.
19. Clerks of courts.
20. No judicial officer, except justice of the peace, to receive fees; not to act as attorney or counselor.
21. Publication of statutes.
22. Terms of office of present justices of the peace and local judicial officers.
23. Courts of special sessions.

ARTICLE VII.

§ 1. State credit not to be given.
2. State debts, power to contract.
3. State debts to repel invasions.
4. Limitations of legislative power to create debts.
5. Sinking fund, how kept and invested.
6. Claims barred by statute of limitations.
7. Forest preserve.
8. Canals, not to be sold; not applicable to certain canals; disposition of funds.
9. No tolls to be imposed; contracts for work and materials; no extra compensation.
10. Canal improvement and cost thereof.
11. Payment of state debts
12. Debts for improvement of highways.

ARTICLE VIII.

§ 1. Corporations, formation of.
2. Dues of corporations.
3. Corporation, definition of term.
4. Savings bank charters; restrictions upon trustees; special charters not to be granted.
5. Specie payment.
6. Registry of bills or notes.
7. Liability of stockholders of banks.
8. Billholders of insolvent bank, preferred creditors.

9. Credit or money of the state not to be given.
10. Counties, cities and towns not to give or loan money or credit; limitation of indebtedness.
11. State board of charities; state commission in lunacy; state commission of prisons.
12. Boards appointed by governor.
13. Exisfing laws to remain in force.
14. Maintenance and support of inmates of charitable institutions.
15. Commissioners continued in office.

ARTICLE IX.

§ 1. Common schools.
2. Regents of the university.
3. Common school, literature and the United States deposit funds.
4. No aid to denominational schools.

ARTICLE X.

§ 1. Sheriffs, clerks of counties, district attorneys and registers; governor may remove.
2. Appointment or election of officers not provided for by this constitution.
3. Duration of term.
4. Time of election.
5. Vacancies in office, how filled.
6. Political year.
7. Removal from office for misconduct, etc.
8. Office deemed vacant.
9. Compensation of officers.

ARTICLE XI.

§ 1. State militia.
2. Enlistment.
3. Organization of militia.
4. Appointment of military officers by the governor.
5. Manner of election of military officers prescribed by the legislature.
6. Commissioned officers, their removal.

ARTICLE XII.

§ 1. Organization of cities and villages.
2. Classification of cities; general and special city laws; special city laws; how passed by legislature and acceptance by cities.
3. Election of city officers, when to be held; extension and abridgment of terms.

ARTICLE XIII.

§ 1. Oath of office.
2. Official bribery and corruption.
3. Offer or promise to bribe.
4. Person bribed or offering a bribe may be a witness.
5. Free passes, franking privileges, etc., not to be received by a public officer; penalty.
6. Removal of district attorney for failure to prosecute; expenses of prosecutions for bribery.

ARTICLE XIV.

§ 1. Amendments to constitution, how proposed, voted upon and ratified.
2. Future constitutional conventions; how called; election of delegates; compensation; quorum, submission of amendments; officers; rules; vacancies; taking effect.
3. Amendments of convention and legislature submitted coincidentally.

ARTICLE XV.

§ 1. Time of taking effect.

Preamble: We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessing, do establish this Constitution.

GENERAL PRINCIPLES OF CONSITUTIONAL CONSTRUCTION.

A constitution is an instrument of government made and adopted by the people for practical purposes connected with the common business and wants of human life. (People v. N. Y. C. R. R. Co., 24 N. Y. 485; McKoan v. Deveries, 3 Barb. 196.)

The meaning of the words in a constitutional provision is to be reached in two ways: first, by ascertaining what the framers desired to guard against by the provision; and, second, by ascertaining the meaning of the words when applied to a statute by writers and courts. (People v. Supervisors of Chautauqua, 43 N. Y. 10, 14.)

A constitution should be so construed as best to promote the great objects for which it was made; avoiding the two extremes of a liberal or strict construction. (North River Steamboat Co. v. Livingston, 3 Cow. 713, 750.)

In construing a constitutional provision, its history and the conditions and circumstances attending its adoption must be considered. (Sweet v. City of Syracuse, 129 N. Y. 316.)

The rule of statutory interference with vested rights has but little, if any, application to the construction of the constitution. (Matter of Lee & Co.'s Bank, 21 N. Y. 9.)

The same rules of construction which are applicable to statutes govern in constitutional interpretation. (Matter of New York District Railway, 42 Hun, 621; affd., 107 N. Y. 42.)

In construing the language of a constitution the courts have nothing to do with the arguments ab inconvenienti. (People v. Morrell, 21 Wend. 563; Newell v. People, 7 N. Y. 9, 109.)

A constitutional provision should not be so construed as to work a public mischief, unless its language is such that no other course is open to the court. (People, ex rel. v. Lorillard, 135 N. Y. 285, citing Smith v. People, 47 id. 330; People, ex rel. v. Potter, id. 375; People, ex rel. v. Angle, 109 id. 564.)

The terms of a written constitution if plain, clear and unambiguous, conveying a distinct meaning, will not be extended by implication. (Settle v. Van Evrea, 49 N. Y. 280.)

In giving construction to a constitutional provision the whole

provision is to be considered, and the real intent should prevail over the strict letter, but that intent must be gathered from the language, unless this would lead to palpable injustice, contradiction or absurdity. (Adams v. East River Savings Inst., 136 N. Y. 52; aff'g 47 State Rep. 175.)

Constitutions should be so construed as to give effect to every part thereof and leave each part some office to perform; to deprive any part of effect and meaning when it is susceptible of a different interpretation is unauthorized. (People, ex rel. v. Angle, 109 N. Y. 564; Cooley's Const. Lim., p. 72.)

In construing a constitutional provision the intent of the enactment must prevail over the letter thereof. (People, ex rel. v. Lorillard, 135 N. Y. 285; People, ex rel. v. Potter, 47 id. 375.)

Greater care and caution should be used in adding words to or striking them from the constitution than if the provisions were contained in a statute. (People ex rel. v. Wemple, 125 N. Y. 485.)

The constant and uniform construction of a constitutional provision by every department of the state government will have great, if not controlling weight, upon its interpretation, and almost the force of a judicial exposition. (People v. Home Ins. Co., 92 N. Y. 328, 337; People, ex rel. v. Williams, 55 id. 367; People v. Supervisors of Orange, 17 id. 235.)

It must be assumed that the legislature and all other public bodies intrusted with the functions of government will use the power conferred by the constitution or the law fairly and in the public interests. (Clark v. State, 142 N. Y. 101.)

Statutes are presumed constitutional, and a court will only declare them void in a clear case. (Roosevelt v. Goddard, 52 Barb. 533; People, ex rel. v. Durston, 119 N. Y. 569; Sweet v. City of Syracuse, 129 id. 316; People, ex rel. v. Rice, 135 id. 484.)

A statute evading the terms, or the necessary implied purposes of a constitution is as clearly void as if forbidden in express terms. (People v. Albertson, 55 N. Y. 50.)

A statute cannot be declared unconstitutional or defective where it may be completely executed. (People, ex rel. v. City of Rochester, 50 N. Y. 525.)

The constitutionality of a statute is to be tested not by what has been done under it, but by what may by its authority be done. (Stuart v. Palmer, 74 N. Y. 183; Matter of South Market Street, 67 Hun, 594.)

Actual and material injury must exist to warrant a court in

declaring a statute unconstitutional. (People v. Canal Board, 55 N. Y. 390.)

The question of constitutionality should be determined by the language and general scope of the statute, and not by independent inquiries as to facts outside of the provisions of the statute itself. (Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.) And if it cannot be made to appear by argument deduced from the language of the law itself or from matters of which the court can take judicial notice that the act is unconstitutional, it must stand. (People, ex rel. v. Durston, 119 N. Y. 569.)

A court should not pass upon the constitutionality of a statute unless necessary to a decision in a cause. (Frees v. Ford, 6 N. Y. 176; People v. Crissey, 91 id. 616; People v. Brooklyn, 89 id. 75.)

Nor should a court declare a statute unconstitutional unless required by the most cogent reasons, or compelled by unanswerable grounds. (People v. Budd, 117 N. Y. 13.)

The language of the statute must comply with the constitution in substance and form. (People v. Allen, 42 N. Y. 404.)

The general rule is that where a part of a statute is in conflict with the constitution, and that part is entirely separable from the residue, so that the other portion of it can be enforced without any reference to the former, the unconstitutional part only will be condemned. (Wynehamer v. People, 13 N. Y. 378, 441; Matter of De Vaucne, 31 How. Pr. 289.)

Before a statute can be declared unconstitutional, it must be shown to be in direct conflict with the constitution. (Morris v. People, 3 Denio, 331; Grant v. Courter, 24 Barb. 232.)

The courts should not imply a conflict between a statute and the constitution. (Cochran v. Van Surlay, 20 Wend. 383; Newell v. People, 7 N. Y. 109.)

When a statute and the constitution can be so construed as to enable both to stand, it is the duty of the court to give them that construction. (Sweet v. City of Syracuse, 129 N. Y. 316; People ex rel. v. Terry, 108 id. 1.)

Every presumption is in favor of the constitutionality of a statute. (Fort v. Cummings, 90 Hun, 481.) (1895.)

A statute must be viewed with reference to what could be done under it, and not what actually was done. (Coxe v. State, 144 N. Y. 396.) (1895.)

The constitutionality of an act is not to be determined by what has been done under it in any particular instance, but what may be done under it by virtue of its authority. (Colon v. Lisk, 153 N. Y. 188.) (1897.)

Where a portion of a statute may be carried into effect without the aid of the remainder, it may be upheld, although the remainder is unconstitutional. (Matter of Oneida Street, 37 App. Div. 266.) (1899.)

The rule of construction that a law is not retroactive unless clearly expressed or intended by the enacting power, applies to constitutional provisions. (O'Reilly v. Utah, Nevada, etc., Stage Co., 87 Hun, 406.) (1895.)

The proceedings of the convention in which the constitution was framed may be examined in considering the purpose of a given article or section. (Goedel v. Palmer, 15 App. Div. 86.) (1897.)

Where in a new constitution, an article relating to the same subject-matter embraced in a provision of the former constitution which has received judicial construction, is phrased in different language or qualified, it is presumed that the effect of the construction placed upon the former provision is intended to be avoided. (Matter of Smith, 90 Hun, 568.) (1895.)

A statute will be construed to be prospective unless the intention of the legislature to give it a retroactive effect is expressed in language clear and expressed so that no reasonable doubt exists in respect thereto. (Persons v. Gardner, 42 App. Div. 490.) (1899.)

A special and local statute providing for a particular case or class of cases is not repealed by a subsequent statute general in its terms, provisions and obligation, unless by the language used the intent to repeal or alter is manifest, although the terms of the general act are broad enough to include the cases embraced in the special law and ordinarily an express repeal by some intelligible reference to the special act is necessary to accomplish that end. (People v. Keller, 35 App. Div. 493.) (1898.)

The provision confirming contracts made by the board of improvement if unconstitutional is so independent as not to render void the provision allowing the extending of the original contract. (Parfitt v. Ferguson, 159 N. Y. 111.) (1899.)

A statute which is unconstitutional so far as it purports to operate retrospectively may be upheld as to future cases. (Purdy v. Erie R. R. Co., 162 N. Y. 42.) (1900.)

Public grants are to be construed strictly so as to prevent rights from being taken beyond those which the words of the grant by their ordinary construction convey. (Skaneateles W. W. Co. v. Skaneateles, 161 N. Y. 154.) (1900.)

Actual and material injury must exist to warrant a court in declaring a statute unconstitutional. A court should not pass

upon such constitutionality unless necessary to a decision in the cause nor unless required by the most cogent reasons or compelled by unanswerable grounds. (Matter of Fuller, 62 App. Div. 428.) (1901.)

Every presumption is in favor of the constitutionality of a statute and when it and the constitution can be construed so as to enable it to stand it is the duty of the court to give that construction. Where the unconstitutional part of a statute can be separated from the residue so that the latter may be enforced without reference to the former the part in conflict with the constitution will alone be declared void. (Matter of Fuller, 62 App. Div. 428.) (1901.)

The court of appeals will not consider the constitutionality of an act imposing a penalty when the question was not raised at the time of the trial as it must be deemed to have been waived. (Dodge v. Cornelius, 168 N. Y. 242.) (1901.)

The constitutional validity of a law is to be tested not by what has been done under it but what it authorizes to be done. (Williams v. Village of Port Chester, 72 App. Div. 505.) (1902.)

The meaning of words in a constitutional provision is to be reached in two ways: First, by ascertaining what the framers desired to guard against by the provision; second, by ascertaining the meaning of the words when applied to a statute by writers and courts. (McGrath v. Grout, 69 App. Div. 316.) (1902.)

Every presumption is in favor of the constitutionality of a statute and if the statute and the act can be reasonably construed so as to enable the latter to stand, it is the duty of the courts to give that construction; still it is none the less their duty to adjudge the statute void if it is in plain conflict with the real intent of the fundamental law, when considered in the light of history and in all its aspects. (People ex rel. v. Met. St. Ry. Co. v. Tax Com'rs, 174 N. Y. 417.) (1903.)

In determining the constitutionality of an act the court, except in extraordinary circumstances, is limited to a construction of the law itself construed in the light of the facts of which the court can take judicial notice. (Tenement House Department v. Moeschen, 89 App. Div. 526.) (1904.)

In its inquiry as to whether an improvement authorized by statute is for a purpose which is public or one merely private or local the court is confined to matters appearing on face of the bill itself and to things that are the subject of judicial notice. (Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.)

ARTICLE I.

Persons not to be disfranchised.— Section 1. No member of this State shall be disfranchised, or deprived of any of the rights and privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

[Section 1 of article I of the amended constitution of 1846, without change.]

A law affecting any rights of an individual can only be questioned as to constitutionality by the individual affected. (Sinclair v. Jackson, 8 Cow. 598; Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.) "Law of the land" does not mean the act of legislature which deprives the citizen of his rights, privileges or property. (Wynehamer v. People, 13 N. Y. 393 et seq., which is a leading case as to the meaning of "law of the land," and "due process of law." See also Taylor v. Porter, 4 Hill, 140; White v. White, 5 Barb. 474; People v. Toynbee, 20 id. 168, 198; Green v. Shumway, 39 N. Y. 426; Bowe v. U. S. Reflector Co., 36 Hun, 410.)

Statute providing for courts-martial not in conflict with this section. (People ex rel. v. Daniell, 50 N. Y. 274, 280.)

The provisions of this section do not take away the legislature's power of taxation. (Town of Guilford v. Supervisors, 13 N. Y. 143; People v. Supervisors of Ulster Co., 36 Hun, 491, 496.)

Section 383 of the Penal Code prohibiting the exclusion of colored persons from places of amusement not in conflict with this section. (People v. King, 42 Hun, 186; aff'd., 110 N. Y. 418.)

The sovereign power may regulate the use of one's property with reference to the public welfare. (Id.)

The right to liberty secured to the citizen by constitutional prohibition includes the right to adopt and follow such lawful individual pursuits, not injurious to the community, as he may see fit. Principle applied to statute prohibiting manufacture of oleomargarine, etc. (People v. Marx, 99 N. Y. 377.)

Section 292 of the Penal Code prohibiting employment or exhibition of a child under fourteen years as a dancer, is not contrary to this section. (People v. Ewes, 47 St. Rep. 501;

S. C., 141 N. Y. 129; as to § 713 of Penal Code, see People ex rel. Zeese v. Maston, 79 Hun, 580.)

The provision permitting the formation of a state commission from one political party is not in violation of the constitution. (Rogers v. Common Council of Buffalo, 123 N. Y. 173, 181.)

Rights of citizens are not abridged by law providing for eight hours' labor as in Laws 1891, chapter 105, title 24, section 504. (People v. Warren, 77 Hun, 120.)

As to constitutionality of section 873 of Code of Civil Procedure providing for examination of person of plaintiff in personal injury cases. (Lyon v. Man. R. Co., 142 N. Y. 298.)

Ticket brokerage act, held unconstitutional as violative of the constitutional guarantees of civil rights and privileges and of liberty. (People ex rel. Tyroler v. Warden, 157 N. Y. 116.) (1898.)

The citizen has no absolute right to the secrecy of his papers. The right guaranteed is not against all searches and seizures but against unreasonable ones. (People v. Coombs, 36 App. Div. 284.) (1899.) (Affd., 158 N. Y. 532.)

The right to appeal is not a constitutional right. Where it does exist it is simply the continuance of an existing practice by the constitution subject to the legislative right to curtail or abolish it or is founded on some statute. (People v. Rutherford, 47 App. Div. 209.) (1900.)

Query. Whether a statute imposing a penalty upon a witness to a will who omits to write down his residence opposite his name is unconstitutional. (Dodge v. Cornelius, 168 N. Y. 242.) (1901.)

Query. As to validity of provision of side path law limiting the use of side path to licensed bicycle owners. (Ryan v. Preston, 59 App. Div. 97.) (1901.)

A corporation is not a citizen of the state in a constitutional sense. (Anglo-American Provision Co. v. Davis Provision Co., 169 N. Y. 506.) (1902.)

An act prohibiting a person receiving a pension from a city from holding any office under the city unconstitutional. (People v. Woodbury, 38 Misc. 189.) (1902.)

Provision of labor law as to hours of employment of bakers held constitutional. (People v. Lochner, 73 App. Div. 120.) (1902.)

Section 351, Penal Code prohibiting the keeping of a place for making, recording and registering bets and wagers does not establish two different punishments for the same offense. (People v. Stedeker, 75 App. Div. 449.) (People v. De Bragge, 73 App. Div. 579.) (1902.)

Section 687a, Penal Code, providing for indeterminate sentences constitutional. (People v. Warden of Sing Sing, 39 Misc. 113.) (1902.)

The rule of the New York fire department forbidding member of the force of being member of any political club or association intended to affect legislation concerning fire department does not abridge his right as citizen. (People v. Scannell, 74 App. Div. 406.) (1902.)

A school district cannot maintain an action to have a statute transferring a portion of its territory to another district, declared unconstitutional as the only persons interested in the determination of that question are taxpayers and creditors and it is not a real party in interest. (Board of Education v. Board of Education, 76 App. Div. 355.) (1903.)

A party may waive a rule of law or a statute or even a constitutional provision enacted for his benefit or protection where it is exclusively a matter of private right and no consideration of public morals is involved and having done so he cannot subsequently invoke its protection. In a negligence action where the plaintiff has been examined by the defendant's physicians, who have testified without objection, the defendant cannot ask the court to permit a new examination. (Whitaker v. Staten Island M. R. R. Co., 76 App. Div. 351.) (1902.)

A holder of a liquor tax certificate who, in a proceeding for the cancellation thereof, interposes a verified answer waives his constitutional right to refuse to answer under oath. (Matter of Cullinan, 76 App. Div. 362.) (1902.)

Section 344b of the Penal Code providing that the possession of policy slips is presumptive evidence of the possession knowingly thereof is constitutional. (People v. Adams, 176 N. Y. 351.) (1903.)

The provision of sanitary code of New York city requiring a person desiring to sell milk to obtain a permit of the board of health, held constitutional. (People v. Vandecarr, 175 N. Y. 440.) (1903.)

Query. Whether the Legislature has power to make the breach of a civil contract a criminal offense. (People v. Orange County Road Construction Co., 175 N. Y. 84.) (1903.)

In determining the reasonableness of a statute the court is at liberty to consider the established usages, customs and traditions of the people and to have in view the promotion of their comfort and the preservation of the public peace and good order. (Grossman v. Caminez, 79 App. Div. 15.) (1903.)

Provisions of the Penal Code requiring an agent to obtain

written authority to sell real estate held unconstitutional. (Grossman v. Caminez, 79 App. Div. 15.) (Cody v. Dempsey, 86 App. Div. 335; contra, Whiteley v. Terry, 83 App. Div. 197.) (1903.)

Provision of New York charter for discharge of prisoner convicted of vagrancy held constitutional. (People ex rel. Abrams v. Fox, 77 App. Div. 245.) (1903.)

The courts have power to set aside indictments whenever it has been made to appear that they have been founded upon illegal and incompetent testimony. This power is based upon the inherent right and duty of the courts to protect the citizen in his constitutional prerogative and to prevent oppression or persecution. It is a power which the Legislature can neither curtail or abolish.

A motion may be entertained to dismiss an indictment on grounds other than those specified in section 313 of the Code of Criminal Procedure. (People v. Glen, 173 N. Y. 395.) (1903.)

Provisions of public health law prohibiting children from attending school unless they have been vaccinated held to be a reasonable regulation and constitutional. (Matter of Viemeister v. White, 88 App. Div. 44.) (1903.)

The legislature is vested with absolute power of taxation, subject only to the limitation that the burden of taxation shall be uniform and equal over all. Tax upon rents reserved in perpetual lease constitutional. (Woodruff v. Oswego Starch Factory, 177 N. Y. 23.) (1903.)

Under Employers' Liability Act a complaint which states a cause of action good at common law is not demurrable because it fails to allege that the employee served upon the employer the notice required by the act. The statute requires the service of a notice only where the plaintiff seeks to enforce a cause of action which did not exist at common law and was conferred by statute, otherwise it would be unconstitutional. (Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245.) (1903.)

The right to be appointed to a nonelective municipal office is only a privilege, and a state may pass laws to regulate the privileges and immunities of its own citizens provided that in so doing it does not abridge their privileges and immunities as citizens of the United States. It can limit the right of appointing officers to remove their appointees. (People ex rel. Kenney v. Folks, 89 App. Div. 171.) (1903.)

The provisions of the highway law providing for the registration of automobiles are not invalid as class legislation. (People v. MacWilliams, 91 App. Div. 176.) (1904.)

Trial by jury.— § 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

[Section 2 of article I of the amended constitution of 1846, without change.]

The expression "in all cases in which it has been heretofore used" is generic. It does not limit the right to the mere instances in which it has been used, but extends it to such new and like cases as might afterward arise. (Wynehamer v. People, 13 N. Y. 426.) The word "heretofore" in this clause means before 1846, and cannot be carried back to 1777 and confined to cases which at that early period were triable by a jury. (Id. 427. See also Riggs v. Shannon, 27 Abb. N. C. 456.) Such jury must be a jury of twelve men. (Id. 427; People ex rel. v. Justices, 74 N. Y. 406.)

Act creating special session for trial of petit larceny without a jury is constitutional. (Murphy v. People, 2 Cow. 815.)

Constitutional provision does not apply to the petty offenses triable before a court of special sessions. (People ex rel. v. Justices, 74 N. Y. 406.)

Right to trial by jury has no reference to proceedings intended merely to prevent the commission of offenses. (Duffy v. People, 1 Hill, 355; S. C., 6 id. 75.)

Nor does it apply to special proceedings for removal of tenants. (Roberts v. Cone, 3 Alb. L. J. 151.) Nor to a proceeding for determining whether a license should not be revoked for violation of law. (People ex rel. v. Commissioners of Police of Brooklyn, 59 N. Y. 92.) Nor to imprisoning for nonpayment of costs. (Standacher v. Webb, 16 Hun, 42.) Nor to a summary proceeding for judgment on a recognizance. (People v. Quigg, 59 N. Y. 83.)

Legislature cannot take the right away by classing among disorderly persons those who are entitled to a jury trial. (People ex rel. v. Baird, 4 Weekly Dig. 576.)

Act of legislature not unconstitutional because it allows title to land to be tried in an action of partition; party desiring jury trial may have it by issues sent to circuit for trial. (Ward v. Ward, 23 Hun, 431.)

The provision of the constitution relative to trial by jury relates to the trial of issues of fact, in civil and criminal proceedings, and has no relation to assessments for damages for

property taken for a public purpose. (Livingston v. Mayor of New York, 8 Wend. 85; Matter of Newell Smith, 10 id. 449; People ex rel. Herrick v. Smith, 21 N. Y. 595; Astor v. Mayor, 62 id. 580.)

The trial by jury is preserved by the constitution in all cases in which it had been used prior to its adoption. But in controversies cognizable in courts of equity a jury trial was never, in general, resorted to. (Matter of the Empire City Bank, 18 N. Y. 199, 210; Sands v. Kimbark, 27 id. 147; Hudson v. Caryl, 44 id. 553, 555.)

The lien law of 1862, relating to liens upon vessels, is not unconstitutional as infringing upon the right of trial by jury. (Sheppard v. Steele, 43 N. Y. 52.) As to constitutionality of mechanics' lien law, see Schillinger Fire Proof Cement Co. v. Arnott, 14 N. Y. Supp. 326.

In an action to abate a nuisance, a jury trial is a matter of right. (Hudson v. Caryl, 44 N. Y. 553.)

The circumstances of the question involved being one of facts does not of itself give a right to a trial by jury. (McKeon v. See, 51 N. Y. 300.) If request for jury be not founded on tenable ground, even if right existed, the court would not err in refusing request. (Id.)

Waiver of trial by jury may be adjudged upon any evidence which would be sufficient to constitute a waiver of rights in other cases. (Baird v. Mayor, 74 N. Y. 382; Powell v. Waldron, 89 id. 328; Hund v. Kennedy, 83 id. 149.)

Act providing summary trial and punishment of public intoxication by magistrate is not repugnant to this section. (People v. Burleigh, 1 Crim. R. 522.)

In an equitable action a trial by jury is not a matter of right; it rests in the discretion of the court. (Knickerbocker Life Insurance Co. v. Nelson, 8 Hun, 21; Cushman v. Thayer Mfg. Co., 76 N. Y. 365.)

Defendant cannot be deprived of constitutional right to trial by jury because plaintiff demands equitable relief. (Libman v. Manhattan El. R. R. Co., 26 Abb. N. C. 423; S. C., 59 Hun, 428.)

For recent decisions as to the right of trial by jury, see Colon v. Lisk, 153 N. Y. 188 (1897); Buttling v. Hatton, 18 App. Div. 128 (1897); Schillinger v. Arnott, 152 N. Y. 584 (1897).

An act which merely regulates the mode of securing a common-law jury is not violative of the right of trial by jury. (People v. Dunn, 157 N. Y. 528.) (1898.)

An act providing for a special jury in criminal cases and for

the mode of selecting the same and creating a special jury commissioner is not violative of this section. The constitution does not secure to the defendant any particular mode of jury trial nor any particular method of jury selection. It secures simply the right of a trial by a common-law jury of twelve men. The right to peremptory challenges may be granted or withheld at the legislative will. The legislature may regulate the mode of selecting and procuring grand jurors. (People v. Dunn, 157 N. Y. 528.) (1899.)

The provision in the United States constitution that "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury" applies to the United States courts only. (People v. Hall, 51 App. Div. 57.) (1900.) (Affd., 169 N. Y. 184.)

The accused is not denied his constitutional right to a trial by a common-law jury because jurors are selected from the general panel after the exclusion therefrom of competent jurors by the commissioner of jurors for the purpose of making up a special jury list. (People v. Meyer, 162 N. Y. 357.) (1900.)

The holder of a liquor tax certificate is not entitled to a trial by jury before he can be deprived thereof. (Matter of Lyman, 46 App. Div. 387.) (1899.)

Provisions of an act authorizing a comparison of disputed handwriting with other writing proved to the satisfaction of the court to be genuine leaves the ultimate determination of the genuineness of the handwriting in question with the jury and is, therefore, constitutional. (People v. Molineux, 168 N. Y. 264.) (1901.)

Anti-policy law constitutional. (Wilson v. Flynn, 72 App. Div. 67.) (1902.)

The provision that trial by jury shall remain inviolate does not apply to the trial of misdemeanors by courts of special sessions and justices' courts. (People v. Brady, 37 Misc. 126.) (1902.)

The property right of the owner of a liquor tax certificate is a limited right not protected by the constitutional requirement of a jury trial. (Matter of Cullinan, 76 App. Div. 362.) (1903.)

The right to successive jury trials in an action of ejectment is not an absolute one but is a matter of procedure, subject to change by the legislature. (Satterlee v. Kobbe, 173 N. Y. 691.) (1903.)

In an action at law the court has no power against the objection of either party to discharge the jury and in their ab-

sence pass upon the question of fact. The constitution guarantees to either party the right to have the question of fact passed upon by the jury. (Gansberg v. Sagemohl, 67 App. Div. 554.) (1902.)

In a common-law action brought by an executor or administrator a compulsory reference should not be ordered unless it clearly appears that the trial will necessarily involve the examination of a long account. If other independent issues are raised by the pleadings they should be first tried by a jury and a reference then ordered to determine those involving examination of long account. (Malone v. Sts. Peter & Paul's Church, 172 N. Y. 269.) (1902.)

Freedom of worship; religious liberty.— § 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

[Section 3 of article I of the constitution of 1846, without change.]

This section does not shield a witness from cross-examination as to his religious belief. (Stanbro v. Hopkins, 28 Barb. 265.)

A statute which prevents theatrical entertainments on Sunday is valid. (Lindenmuller v. People, 33 Barb. 548; Neundorff v. Duryea, 69 N. Y. 557; People v. Hoynn, 20 How. Pr. 76.)

A prosecution under section 288 of the Penal Code for failure to furnish necessary medical attendance to a child against a person who belongs to a religious society which does not believe in physicians and believes that the child will be cured through the medium of prayer is not in violation of this section, since practices inconsistent with the peace and safety of the state and the protection of the lives and health of its inhabitants are properly punishable. (People v. Pierson, 176 N. Y. 201.) (1903.)

Habeas corpus.— § 4. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

[Section 4 or article I of the amended constitution of 1846, without change.]

The legislature cannot commit a person for contempt and then forbid all inquiry into the rightful exercise of that power, for this would take away the benefit of the writ of habeas corpus. (People ex rel. McDonald v. Keeler, 32 Hun, 563; S. C., 99 N. Y. 463.)

Excessive bail and fines.— § 5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

[Section 1 of article V of the amended constitution of 1846, without change.]

The following is a history of the constitutional provision against cruel and unusual punishment found in the case of Matter of Bayard, 25 Hun, 546, opinion of Rumsey, J.: "We first find the injunction against cruel and unusual punishment in the Declaration of Rights, presented by the convention to William and Mary before settling the crown upon them in 1688. That declaration recites the crimes and errors which had made the revolution necessary. These recitals consist of the acts only of the former king and the judges appointed by him, and one of them was that illegal and cruel punishment had been inflicted. (Stephen's Eng. Const. 44.) The punishments complained of were the pillories, slittings and mutilations which the corrupt judges of King James had inflicted without warrant of law, and the declaration was aimed at the acts of the executive, for the judges appointed by him, and removable at pleasuse, were practically part of the executive. It clearly did not then refer to the degree of punishment, for the criminal law of England was at that time disgraced by the infliction of the very gravest punishment for slight offenses, even petit larceny then being punishable with death. But the declaration was intended

to forbid the imposition of punishment of a kind not known to the law, or not warranted by the law."

The provision as to excessive bail only applies to criminal actions. (People v. Tweed, 3 Abb. N. S. 1, 28.)

Where the legislature has established a general maximum punishment throughout the state for a crime, it may change or increase the punishment as to particular localities. (Matter of Bacard, 25 Hun, 540.)

Prison labor imposed by a legislative act is not an unconstitutional penalty, not for a crime. (Barker v. People, 20 Johns. 457.)

This section confers power upon the courts to declare void acts of the legislature prescribing punishments for crime, in fact cruel and unusual. (People ex rel. Kemmler v. Durston, 119 N. Y. 569.)

Penal code, sections 488, 489, providing for the infliction of the death penalty by means of electricity, is constitutional. (Id.)

Bill of rights. § 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petty offenses which may be punished summarily by the order of the Legislature), unless on presentment or indictment of a grand jury. [illegible] the party accused shall have the right to be heard by himself and counsel, or either, at his election, and to demand the nature and cause of the accusation and have a copy thereof. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

[illegible] No person shall be subject, after conviction and sentence in any court of this State, to be sent out of this State for punishment, or to be punished by exile, without [illegible]

Indictment of Grand Jury.

This provision has reference to criminal proceedings only with a view to punishment under the criminal law. (Matter of Smith, 10 Wend. 449.)

The bill or rights must be interpreted in light of the law as it was when the bill was adopted, and though indictments could generally be tried only in the county where the offense was committed, there were exceptions by virtue of legislative enactment. (Mack v. People, 82 N. Y. 235; People v. Dowling, 84 id. 478.)

An indictment found by a grand jury drawn under a void act is the indictment of a de facto grand jury selected and organized under the forms of law and therefore valid. (People v. Petrae, 92 N. Y. 128.)

Provision of Code of Criminal Procedure allowing amendment to indictment, by direction of court, without prejudice to defendant, is constitutional. (People v. Johnson, 104 N. Y. 213.)

When, in a case of misdemeanor, a district attorney elects to prosecute by indictment, he must do so through the medium of a legally constituted grand jury and by an indictment that is good at law both in form and substance. (People v. Scannell, 37 Misc. 345.) (1902.)

Right to Counsel, Etc.

A prisoner confined in jail has a constitutional right to private interview with counsel, even before indictment. (People ex rel. v. Risely, 13 Abb. N. C. 186.)

The right to appear and defend with counsel cannot be denied an accused person in courts-martial. (People ex rel. v. Van Allen, 55 N. Y. 31.)

But such right is not given a policeman accused before a board of commissioners. (People ex rel. v. Police Commissioners, 31 Hun, 209.)

It is wrong to permit a jury to visit place where crime was committed without attendance of defendant or his counsel. (People v. Palmer, 43 Hun, 397.)

Twice in Jeopardy.

A new trial cannot be granted where the defendant has been acquitted. (People v. Comstock, 8 Wend. 549.)

A writ of error will not lie in behalf of the people after judgment for defendant in a criminal case. (People v. Corning, 2 N. Y. 9.)

May be tried again where plea to jurisdiction has been raised and prisoner discharged. (Gardiner v. People, 6 Park. 155, 190.)

A prisoner against whom a wrong judgment was pronounced upon a regular trial and conviction, cannot be subjected to another trial. (Shepherd v. The People, 25 N. Y. 406. See also, in this connection, Hartung v. People, 22 N. Y. 95; S. C., 26 id. 167.)

An arrest of judgment after conviction upon the ground of mistake is no bar to trial for same offense. (People v. Casborus, 13 Johns. 351.)

Where a jury failed to agree upon a verdict in a criminal case, and jury was discharged, the defendant may be tried again. (People v. Goodwin, 18 Johns. 187); and where a jury separated without authority before rendering a verdict a new trial could be had. (People v. Reagle, 60 Barb. 527.)

A new trial may be had upon the reversal of a conviction at the instance of the defendant, since the jeopardy is incurred with the consent of and as a privilege granted to the defendant upon his application. (People v. Palmer, 109 N. Y. 413; People v. Randolff, 5 Park. 77.)

Where the defendant was acquitted upon some counts in an indictment and convicted on another, the reversal of the conviction does not disturb the acquittal and defendant can only be retried upon the count in which the verdict of conviction was rendered. (People v. Dowling, 84 N. Y. 478.)

To sustain the plea of a former acquittal it must appear that the party was "put in jeopardy" by the former trial; so if indictment was defective in former trial it is no bar. (Canter v. People, 1 Abb. Dec. 305.)

Conviction for assault and battery no bar to indictment for murder, where the person assaulted subsequently dies of the blows. (Burns v. People, 1 Park. 182.)

The provisions of L. 1886, chap. 21, authorizing the governor to commute a sentence of imprisonment with a condition of serving out the full term upon conviction of a subsequent felony, does not conflict with the provision that no one shall be twice in jeopardy for the same offense. (People ex rel. Willis v. Sage, 11 App. Div. 4.) (1896.)

The trial and acquittal of a person indicted for an offense where the person committing the same is also liable for a penalty to be collected in a civil action does not constitute a bar to the maintenance of such civil action to recover such penalty. (People v. Snyder, 90 App. Div. 422.) (1904.)

Witness against Himself in Criminal Case.

By this provision no one is to be compelled in any judicial or other proceeding against himself, or upon the trial of issues between others, to disclose facts or circumstances that can be used against him as admissions tending to prove his guilt or connection with any criminal offense of which he may then or afterward be charged. (People ex rel. Taylor v. Forbes, 143 N. Y. 219, 228.)

A witness is not protected in a criminal case against another from being compelled to give testimony which implicates him in a crime when he has been protected by statute against the use of such testimony on his own trial. (People ex rel. v. Kelly, 24 N. Y. 74, citing Perine v. Pixley, 7 Paige, 598; People v. Sharp, 107 N. Y. 427.)

Law of 1869, chap. 678, providing that accused "shall at his own request, but not otherwise, be deemed a competent witness" is constitutional. (People v. Courtney, 94 N. Y. 490.)

By consenting to become a witness under the above act, defendant waives constitutional protection and subjects himself to the rules and tests applicable to other witnesses. (Connors v. People, 50 N. Y. 240; Brandon v. People. 42 id. 265.)

Compelling a defendant in a criminal case to stand up for identification by a witness does not compel him to give evidence against himself. (People v. Gardner, 144 N. Y. 119.) (1894.)

Privilege of witness, see Matter of Attorney-General, 21 Misc. Rep. 101 (1897); affirmed, but not on this point, 22 App. Div. 285.

False and fictitious papers retained in a public office purporting to be regular public papers and constituting vouchers for a false bill are not private papers exempted from unreasonable search or seizure, nor do they constitute a violation of defendant's right to exemption from being compelled to give evidence against himself. (People v. Coombs, 158 N. Y. 533.) (1899.)

A statute requiring a party proceeded against for cancellation of liquor tax certificate to answer under oath, unconstitutional. (Matter of Peck, 167 N. Y. 391.) (1901.)

The taking of a prisoner charged with murder to a place outside of the jail for the purpose of examination by physicians for the people as to his mental condition, where defense of insanity is interposed, not objectionable as compelling him to

be a witness against himself. (People v. Truck, 170 N. Y. 203.) (1902.)

In a criminal cause the court will not take notice of the manner in which witnesses have possessed themselves of papers or other articles of personal property which are material and properly offered in evidence. The admission in evidence upon the trial of an indictment for policy playing of private papers alleged to have been unlawfully seized for the purpose of establishing defendant's handwriting on certain policy slips does not compel him to become a witness against himself. (People v. Adams, 176 N. Y. 351.) (1903.)

Taking the shoes of one charged with murder and comparing them with footprints in the newly-fallen snow and introducing upon the trial evidence that they correspond in all respects is not compelling the defendant to be a witness against himself. (People v. Van Wormer, 175 N. Y. 188.) (1903.)

The provision that testimony given by witness cannot be received against him upon any criminal investigation or proceeding does not protect the constitutional rights of the witness so that he cannot be compelled to testify against himself. (People ex rel. Lewisohn v. O'Brien, 176 N. Y. 253.) (1903.)

Due Process of Law.

Due process of law requires that a party shall be properly brought into court and shall there have an opportunity to be heard. The legislature has the right to take away a particular form of remedy and to give a new one. (People ex rel. v. Supervisors, 70 N. Y. 228.)

"Due process of law" cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property. (Taylor v. Porter, 4 Hill, 140.)

Such summary proceedings as were recognized at common law and such as were authorized by statute prior to the adoption of the bill of rights may be regarded as "due process of law." (Rockwell v. Nearing, 35 N. Y. 302.)

The guaranty that no person shall be deprived of his property without due process of law may be violated without a physical taking; it may be destroyed or its value annihilated. (Matter of Jacobs, 98 N. Y. 98, 105, citing Wynehamer v. People, 13 id. 378, and People v. Otis, 90 id. 48.)

All property is protected by this provision without reference as to whether its abuse engenders mischief. (Wynehamer v. People, 13 N. Y. 378.)

As to meaning of word "liberty" in this provision, see People v. Gillson, 109 N. Y. 389.

The meaning of the word "deprived" is the same as "taken" in the same section; and when property is not seized and directly appropriated to public use, though it be subjected to greater burdens than before, it is not taken without due process of law. (Grant v. Courter, 24 Barb. 232.)

This provision is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty or property, whether the proceeding be judicial, administrative or executive. (Stuart v. Palmer, 74 N. Y. 183, containing collation of authorities as to meaning of "due process of law.")

It has no reference to disciplinary proceedings before a medical society. (Matter of Smith, 10 Wend. 449.)

It does not mean that a trial by jury is necessary. (Wynehamer v. People, 13 N. Y. 378, 425; People ex rel. Herrick v. Smith, 21 id. 595.)

This constitutional protection to property may be waived by the owner. (People v. Turner, 117 N. Y. 227.)

Personal service of process is not necessary. The legislature may provide for bringing in parties by publication of notice. (Matter of Empire City Bank, 18 N. Y. 199; Owners of Ground, etc. v. Albany, 15 Wend. 374; Happy v. Mosher, 48 N. Y. 313; Matter of Union El. R. R. Co. of Brooklyn, 112 id. 61.)

Section 435 of the Code of Civil Procedure, providing a substituted service in lieu of personal service, is not violative of the constitutional provision. (Bank v. Thurber, 74 Hun, 632.)

Taxation is not taking property without due process of law. (People ex rel. v. Mayor of Brooklyn, 4 N. Y. 419; Town of Guilford v. Supervisors, 13 id. 145; People v. Supervisors of Ulster Co., 36 Hun, 491.)

A hearing or an opportunity to be heard in an assessment for local improvement is, however, absolutely essential. (Stuart v. Palmer, 74 N. Y. 183.)

A statute directing an assessment for street improvement must contain some provision giving notice to property-owners. (McLaughlin v. Miller, 124 N. Y. 510; Remsen v. Wheeler, 105 id. 573.) Laws 1871, chapter 464, title 10, relating to assessments of water rates in Long Island City, are unconstitutional for want of provision for notice and hearing. (Matter of Trustees of Union College, 129 N. Y. 308.)

A "grievance day" — an opportunity to be heard in respect to the justice and correctness of a proposed assessment — is a necessary part of the due process of law for the levying of asesssments on property. (People ex rel. v. Henion, 64 Hun, 475.)

Sections 663 and 665 of New York consolidation act requiring all tenement-houses to have water on each floor is unconstitutional, as not providing an opportunity to be heard. (Health Dept. v. Trinity Church, 43 St. Rep. 142.)

Collateral inheritance tax law gives sufficient notice and opportunity for a hearing, and does not invade constitutional rights. (Matter of McPherson, 104 N. Y. 306.)

The principle of no opportunity to be heard does not apply to statute providing that property may be sold for unpaid water rates. (Hennessey v. Volkenning, 30 Abb. N. C. 100.)

Provision for some mode of judicial proceeding, when property or effects of a corporation are seized by virtue of a statute, is not essential to validity of statute. (People ex rel. v. Osborn, 57 Barb. 663.)

The common-law right of summary abatement of nuisance without judicial process or proceeding is not affected by this constitutional protection. (Lawton v. Steele, 119 N. Y. 226.)

Prospective salary or other emoluments of a public officer are not property, and an act affecting salary or providing salary in place of fees is constitutional. (Connor v. Mayor, etc., of N. Y., 5 N. Y. 285.)

The power of the legislature to change existing rules of evidence, and vary existing rules for limitation of actions is not affected by this constitutional prohibiton. (People v. Turner, 117 N. Y. 227, citing Rexford v. Knight, 11 id. 308; Hand v. Ballou, 12 id. 541; Howard v. Moot, 64 id. 262.)

Act conferring upon legislature the right to punish, as for contempt, a person refusing to appear as a witness before that body of a committee thereof, is not in violation of this provision. (People ex rel. v. Keeler, 99 N. Y. 463.)

An act curing defects in a tax sale, where such defects exist as mere irregularities and do not extend to matters of jurisdiction, is constitutional. (Ensign v. Barse, 107 N. Y. 329.) But where assessment is void and sales thereunder conveyed no title, act cannot be passed validating such assessment and sales. (Cromwell v. MacLean, 123 N. Y. 474.)

Statute providing for appointment of not more than two civil service commissioners from same political party not in violation of this provision. (Rogers v. Common Council of Buffalo, 123 N. Y. 173.)

Statute (L. 1888, chap. 581) fixing the maximum charge for elevating grain is not violative of the constitutional guaranty protecting private property. (People v. Budd, 117 N. Y. 1. This case is a leading one on the constitutional limitation of the power of the legislature.)

Statute regulating heating of cars valid. (People v. N. Y. & N. H. R. R. Co., 5 N. Y. Supp. 945.) So is L. 1885, chap. 183, § 7, prohibiting manufacture of article in semblance of butter. (People v. Arensburg, 105 N. Y. 123.) Statute prohibiting watering of milk invades neither life, liberty nor property. (People v. West, 106 N. Y. 293.) Act regulating height of buildings facing public streets is constitutional. (People ex rel. v. D'Oench, 111 N. Y. 359.)

Game law of 1871, chap. 721, is declared valid. (Phelps v. Racey, 60 N. Y. 10.)

Act regulating catching of fish in inland waters constitutional. (People v. Doxtater, 75 Hun, 472.) Sections 238, 240 of game law (L. 1892, chap. 488) are not unconstitutional as depriving a county of property without due process of law. (People ex rel. v. Crennan, 141 N. Y. 239.) Provisions of "vinegar act" (L. 1889, chap. 515, § 4), prohibiting manufacture and sale of vinegar containing artificial coloring matter, is constitutonal. (People v. Girard, 73 Hun, 457.) Rapid transit act of 1891, chap. 4, is constitutional. (Matter of Board of Rapid Transit R. R. Commissioners, 47 St. Rep. 347.)

Civil damage act is valid. (Bertholf v. O'Reilly, 74 N. Y. 509.)

Law 1855, chap. 231, subjecting intoxicating liquors, when kept for sale, to destruction is unconstitutional. (Wynehamer v. People, 13 N. Y. 378, 486.)

Act of legislature (L. 1862, chap. 459) authorizing seizure and sale of animals trespassing within a private inclosure without judicial process, is against this constitutional guaranty. (Rockwell v. Nearing, 35 N. Y. 302.) Amendatory act of 1867, chap. 814, provided necessary notice and hearing and is constitutional. (Campbell v. Evans, 45 N. Y. 356.) The temporary seizure, as authorized by this statute, awaiting judicial action, is not violative of the constitution. (Cook v. Gregg, 46 N. Y. 439.)

Statute (L. 1884, chap. 272) prohibiting the manufacture of cigars, etc., in tenement-houses unlawfully interferes with liberty and the use of property, and is unconstitutional. (Matter of Jacobs, 98 N. Y. 98.) To sustain a health law as constitutional against objection that it interferes with personal liberty,

etc., without due process of law, the courts must be able to see that it has some relation to public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. (Idem; containing collation of authorities on legislative power of police regulation, and see People v. Gillson, 109 N. Y. 389.)

L. 1889, chap. 59, § 4, providing that upon the publication of a notice, a negotiable instrument shall no longer be transferable deprives the owner of his property without due process of law and is unconstitutional. (People ex rel. v. Otis, 90 N. Y. 48.)

Act prohibiting sale of article of food upon inducement of of a gift or prize, invades personal rights and is unconstitutional (People v. Gillson, 109 N. Y. 389.)

L. 1884, chap. 202, prohibiting manufacture and sale of any article to take the place of butter is unconstitutional. (People v. Marx, 99 N. Y. 377.)

The right to build frame houses within the fire limit of a city, granted by the common council, cannot be rescinded by subsequent action after houses are partly built. Such rescission would be unconstitutional. (City of Buffalo v. Chadeaque, 27 St. Rep. 60.)

That part of L. 1884, chap. 202, § 13, requiring that milk shall be declared adulterated if it does not contain a certain percentage of certain ingredients deprives an accused person of his liberty and property without due process of law. (People v. Cipperly, 37 Hun, 319.)

Act validating stock subscription to a corporation is depriving persons of property without due process of law. (N. Y. & Oswego R. R. Co. v. Van Horne, 57 N. Y. 473.)

Due process of law in its application to judicial proceedings means a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. If the proceeding involve the personal liability of the defendant, he must be brought within the jurisdiction by service of process within the state, or voluntary appearance. If it be a proceeding in rem, the res must have been seized or attached, or at least must be within the jurisdiction. (Ward v. Boyce, 152 N. Y. 191.) (1897.)

Due process of law does not require a legal proceeding according to the course of the common law, nor personal notice, but it is sufficient if a kind of notice is provided by which it is reasonably probable that the party proceeded against will be

apprised and an opportunity given him to defend. (Schneider v. City of Rochester, 90 Hun, 171.) (1895.)

Due process implies notice or an opportunity to be heard. It is not enough that in the particular case notice was in fact given. (Matter of City of Brooklyn, 87 Hun, 54.) (1895.)

A commitment of a person for a term exceeding that for which sentence, if such person is identified as a former offender, held, not due process of law. (Matter of Kenny, 23 Misc. Rep. 9.) (1898.)

A commitment to an inebriate asylum, without notice to the person committed, without a hearing and without her presence, is not due process of law. (People ex rel. Ordway v. St. Saviour's Sanitarium, 34 App. Div. 363.) (1898.)

A commitment for contempt, by a commissioner appointed in this state to take testimony in an action pending in another state pursuant to section 920 of the Code, is not due process of law. (People ex rel. MacDonald v. Leubischer, 34 App. Div. 577.) (1898.)

The provision of the Penal Code making it a misdemeanor to have in possession silverware below a certain prescribed standard is not unconstitutional as depriving persons in possession of such goods of their property without due process of law. (People v. Webster, 17 Misc. Rep. 410.)

L. 1896, chap. 448. The dog license law held unconstitutional as depriving owner of property without due process of law. (Fox v. Mohawk & Hudson River Humane Society, 25 App. Div. 26.) (1898.)

Ticket brokerage act held unconstitutional as violative of the constitutional guarantees of civil rights and privileges and of liberty. (People ex rel. Tyroler v. Warden, 157 N. Y. 116.) (1898.)

A city has no vested right to money paid by way of assessment for local improvement which the legislature cannot take away by directing it to be refunded to the property-owner. (People v. Molloy, 35 App. Div. 136.) (1898.)

It is competent for the legislature to give additional remedies to creditors and to prescribe that such remedies shall be pursued and shall be exclusive without being held to have deprived creditors of vested rights. (Persons v. Gardner, 42 App. Div. 490.) (1899.)

The legislature has no power to confer upon a commissioner appointed by the courts of another state to take testimony in this state power to punish a witness appearing before him for a refusal to answer any question material and necessary upon

the trial of his case in the other state and by warrant to imprison such witness until he shall comply with the directions of the commissioner. The judicial power is exclusively vested by the constitution in the courts established by or provided for therein and in other officers or bodies where the constitution by express provision vests in such other officers or bodies powers in their nature judicial. The legislature has no power to vest in other bodies or departments of the government judicial powers, or to authorize such other departments or officers of the government to issue process which shall be due process of law. (People v. Leubischer, 34 App. Div. 577.) (1898.)

The enactment of a statute of limitations is unconstitutional as to existing causes of action if it fails to allow a reasonable time after it takes effect for the commencement of suits thereon, and it is not enough that the act affords a reasonable interval between its passage or becoming a law and its taking effect. (Gilbert v. Ackerman, 159 N. Y. 118.) (1899.)

Due process of law requires that a hearing or opportunity to be heard be given to the persons whose property rights are affected by means of due notice given by the board or officials to whom has been delegated by the legislature the administrative or judicial process and detail of taxation before they exercise their judgment and discretion. The doctrine of due process of law has no application whatever to the legislature, but applies only to the judicial department of government which embraces every official to whom the doing of any act of a judicial nature is intrusted by the legislature. That which is within legislative province the legislature may do without notice to any one, and taxation in all its forms and details is within such province. (Matter of Curren, 25 Misc. Rep. 432; affd., 38 App. Div. 82.)

Due process of law means law in its regular course of administration through courts of justice, and secures to the defendant the benefit of those fundamental rules of the common law by which judicial trials are governed. (People v. Sickles, 156 N. Y. 547.)

The trial of the defendant is none the less by due process of law because the jury is composed of persons taken from the body selected by the special commissioner of jurors from the general list as being generally free from those defects which must, or should cause them to be rejected, either by the prosecution or by the defendant. The work of the jury commissioner is preparatory and tentative. In the end the court alone exercises the judicial function of deciding upon the qualifications of the jurors entirely unhampered by the previous examination

and inquiry of the commissioner. If the defendant is secured a trial before an impartial jury taken from the county and conducted according to the law of the land, he has had all the benefit of the constitutional guarantee. No right to appeal from the rulings of the trial court upon challenges is granted by the constitution. (People v. Dunn, 157 N. Y. 528.) (1899.)

The assets of a corporation belong to it and not to its members and are to be administered for the mutual benefit of all existing and new members. The fact that existing members are unable or unwilling to take offered interest in the corporation and subscribe for new shares upon favorable terms within a time limit does not produce an unconstitutional result. (Grobe v. Erie County Insurance Co., 39 App. Div. 183.) (1899.)

A restrictive condition in a proposal for bids to supply beef and mutton for a municipal department restricting same to animals killed within the state is not unconstitutional. (Matter of Rooney, 26 Misc. Rep. 73.) (1899.)

The right of navigation is a public right belonging not to towns, villages or cities as corporations, but rather to all citizens in severalty. Where such right has been impaired by legislative action a law which restores it is within the power and duty of government. (Matter of Cox v. State of New York, 26 Misc. Rep. 177.) (1899.)

A perfected railroad franchise constituted either by direct legislative grant or by consent of local authorities and property-owners in pursuance of the constitution and general laws, especially where followed by actual construction and operation, is a property right that cannot afterward be taken away or diminished either by subsequent constitutional amendment or by legislative or municipal action, except in the exercise of the police power or the right of eminent domain. (Ingersoll v. Nassau Electric R. R. Co., 157 N. Y. 453.) (1899.)

A Code provision requiring the court, upon application of the sheriff when sued for the recovery of chattels levied upon or for damages by reason thereof, to substitute a sheriff's indemnitor as defendant in the action in opposition to wishes of the plaintiff, constitutes a taking of private property without due process of law. (Levy v. Dunn, 160 N. Y. 504.) (1899.)

The drainage act (L. 1895, chap. 384) providing for an apportionment of the damages and expenses incurred in the drainage of agricultural lands over the lands of others, between the petitioners thereunder and the owners of the lands taken in proportion to the benefits received, held unconstitutional. It

permits the taking of private property for a private purpose and benefit. (Matter of Tuthill, 163 N. Y. 133.) (1900.)

The provisions of a general drainage act making the assessment an interest-bearing debt and a lien on the land before any notice of it is given is not unconstitutional provided that subsequent notice and right to appeal is provided for. (Matter of Lent, 47 App. Div. 349.) (1900.).

An interest vested prior to the enactment of the transfer tax act is not taxable. (Matter of Hitchins, 43 Misc. Rep. 485.) (1904.)

A franchise is property of which the owners cannot be deprived except by eminent domain. Where a corporation by virtue of the act under which it is incorporated is authorized to exact certain tolls, it cannot be deprived of such right by subsequent legislative act. (Rochester & C. Turnpike Co. v. Joel, 41 App. Div. 43.) (1899.)

The railroad mileage-book act, being limited in its scope to transportation fully within the limits of the state, is a valid exercise of the state authority. (Purdy v. Erie R. R. Co., 162 N. Y. 42.) (1900.)

But as to a corporation incorporated before the time of the enactment of the statute and authorized to charge three cents a mile, the act is unconstitutional. (Watson v. D., L. & W., 32 Misc. Rep. 311.) (1900.)

The anti-monopoly act does not infringe upon personal liberty without due process of law. (Matter of Davies, 168 N. Y. 89.) (1901.)

Provisions of labor law relative to payment of prevailing rate of wages unconstitutional because it invades rights of liberty and property and confiscates all property rights of the contractor, and imposes a penalty upon the exercise of the lawful right of the city or contractor to agree with their employees upon the terms and conditions of employment. (People ex rel. Rodgers v. Coler, 166 N. Y. 1.) (1901.)

The provisions of the labor law requiring stone to be cut within the state is unconstitutional. (People ex rel. Treat v. Coler, 166 N. Y. 144.) (1901.)

The right given by special statute to a railroad to charge a certain fare is a privilege or franchise in the nature of property which vested in the corporation and until repealed is entitled to the same protection from invasion as any other species of property. (Parker v. E., C. & N. R. R. Co., 165 N. Y. 274.) (1901.)

An act prohibiting the continuance of treating garbage in the borough of Brooklyn under an existing contract deprives the contractor of his property without compensation and without due process of law. (N. Y. Sanitary Co. v. Dept. of Public Health, 32 Misc. Rep. 577 (1900); affd., 61 App. Div. 106.) (1901.)

A provision in a village charter that, as a condition of commencing an action against the village for personal injuries caused by negligence, notice of intention to commence such action shall be filed with the clerk of the village within forty-eight hours after the cause of action has accrued is unreasonable and unconstitutional. (Green v. Village of Port Jervis, 31 Misc. Rep. 59.) (1900.) (Barry v. Village of Port Jervis, 64 App. Div. 268.) (1901.)

Mileage-book act requiring companies to issue mileage-books is unconstitutional as to corporations existing at the tme of its enactment. (Beardsley v. N. Y., L. E. & W. R. R. Co., 162 N. Y. 230.) (1900.)

Tax on a transfer by appointment under a power conferred by will before the statute imposing the tax was enacted is constitutional. (Matter of Potter, 51 App. Div. 212.) (1900.)

The exemption of plankroad companies from taxation creates no vested right which subsequent legislation may not abrogate. (People v. Cummings, 53 App. Div. 36.) (1900.)

The legislature has no power to make valid a void deed of the state comptroller by limiting the time within which an action may be brought to set aside such deed. (Wallace v. International Paper Co., 53 App. Div. 41.) (1900.)

Anti-scalpers' law (L. 1901, chap. 639) unconstitutional, as an unlimited ticket which has been issued is property in the hands of the holder and transferable. (People v. Caldwell, 64 App. Div. 46.) (1901.)

The discharge of sewage upon oyster beds by municipal corporations is a taking of the property of their owners within the meaning of the consittution. (Huffmire v. Brooklyn, 162 N. Y. 584.) (1900.)

The provisions of insanity law permitting a commitment to an asylum without notice, and the provision of the Code of Civil Procedure authorizing the appointment of a committee of the person so committed, to enable the state to secure reimbursement for his maintenance without a new investigation of the question of his competency, are constitutional. (Matter of Walker, 57 App. Div. 1.) (1901.)

The provision of a tax law authorizing county treasurer to

appraise estates subject to transfer tax constitutional. (Matter of Fuller, 62 App. Div. 428.) (1901.)

The warehouseman's act providing that no warehouseman shall be made a party defendant in any action affecting the title to or possession of goods held in storage, unless he shall claim some interest therein other than a lien for storage, deprives the party to an action of a remedy which is a property right. (Follett Wool Co. v. Albany Terminal Warehouse Co., 61 App. Div. 296.) (1901.) (Milligan v. Brooklyn Warehouse Co., 34 Misc. Rep. 55.) (1901.) (Cottew v. Dube, 32 Misc. Rep. 632.) (1901.)

The provision of the transfer tax law taxing estates upon remainder or reversion which come into actual possession or enjoyment after the passgae of the act is a tax upon property and not upon the right of succession. (Matter of Pell, 60 App. Div. 286.) (1901.)

Charter provision that claim for personal injuries must be presented within thirty days after cause of action accrued, unreasonable and unconstitutional. A legislative act which operates to deprive the plaintiff of a reasonable opportunity to vindicate his rights, or substantially denies him a remedy for the wrong he has suffered through a neglect of duty on the part of the defendant which it owed him to keep the streets and highways in a reasonably safe condition for the use of the public, is unconstitutional and void. It appears that where the city is relieved from liability for damages resulting from defective streets, a cause of action exists against the officer absolutely charged with the ministerial duty of keeping them in repair. A remedy for a wrong suffered cannot be denied altogether. (Williams v. Village of Port Chester, 72 App. Div. 505.) (1902.)

Act requiring street railways to furnish free transportation to policemen and firemen, unconstitutional. (Wilson v. United Traction Co., 72 App. Div. 233.) (1902.)

The village of Lansingburgh having been merged in the city of Troy, the latter is liable for cause of action for personal injuries which existed against the former. (Tyler v. Village of Lansingburgh, 37 Misc. Rep. 604.) (1902.)

The sidepath law authorizing the construction and maintenance of sidepaths for the exclusive use of bicycles is constitutional. (Ryan v. Preston, 32 Misc. Rep. 92.) (1901.) (Affd., 59 App. Div. 97.) (1901.)

Charter provision that no action or proceeding to set aside, cancel or annul a local improvement assessment shall be main-

tained unless commenced within thirty days after delivery of assessment-roll to treasurer and notice by him of receipt of same, held constitutional. (Loomis v. City of Little Falls, 66 App. Div. 299.) (Affd., 176 N. Y. 31.) (1903.)

New York rapid transit act held constitutional as against owners of property abutting on streets through which it is constructed. (March v. City of New York, 69 App. Div. 1.) (1902.)

Provisions of section 1499, Code of Civil Procedure, that an action to recover possession of premises upon which stand exterior wall of building, etc., cannot be maintained unless action be commenced within one year after completion of the erection of such wall, is constitutional, being in the nature of a statute of limitations. (Volz v. Steiner, 67 App. Div. 504.) (1902.)

While the legislature has power to provide for the abolition of grade crossings, the owners of property abutting on the streets, although their title extends only to the margin thereof, have incorporeal rights of light, air and access in the nature of easements which constitute private property, and of which they cannot be deprived without compensation. (Egerer v. N. Y. C. R. R. Co., 70 App. Div. 421.) (1902.)

Code provision authorizing the court to reduce alimony inoperative in case of a judgment which did not reserve such power to the court and was entered prior to passage of statute. (Livingston v. Livingston, 74 App. Div. 261.) (1902.) (Affd., 173 N. Y. 377.) (1903.)

Act authorizing removal of chief of police, thereby depriving him of prospective benefit in police pension fund, not unconstitutional, as such right had not become vested. (People ex rel. Devery v. Coler, 71 App. Div. 584.) (1902.) (Affd., 173 N Y.. 103.) (1903.)

Contingent interest of police officer in police pension fund is not a contract or vested property right of which he cannot be deprived by legislative enactment. (People v. Peck, 73 App. Div. 89.) (1902.)

Charter of second class cities was amended by providing for salaries for aldermen to take effect April 25, 1901, subsequently same section was amended by providing that the first amendment should not take effect until January 1, 1902, held that latter amendment was unconstitutional as depriving such officers of vested rights to salaries given by first amendment. (Young v. City of Rochester, 73 App. Div. 81.) (1902.)

Mileage-book act held constitutional as to a corporation reorganized and incorporated subsequent to its enactment since its incorporation was subject to all the provisions, duties and liabilities then imposed by law. (Minor v. Erie R. R. Co., 171 N. Y. 566.) (1901.) (Horton v. Erie R. R. Co., 65 App. Div. 587.) (1901.)

The legislative grant to a corporation of special privileges may be a contract, but where one of the conditions of the grant is that the legislature may alter or revoke it such action cannot be regarded as impairing the obligation of the contract. (Board of Education v. Board of Education, 76 App. Div. 355.) (1903.)

When a municipal corporation changes the grade of a street so as to depreciate the value of abutting property the owner is deprived of property within the meaning of this section. (Matter of Comesky, 83 App. Div. 137.) (1903.)

A tax deed issued under section 132 of the tax law which has been recorded for two years, and which is made conclusive evidence of the legality of all previous proceedings, is admissible in evidence without proof of the regularity of the proceedings on which it is based. (Baer v. McCullough, 176 N. Y. 97.) (1903.)

A provision in a municipal charter authorizing the construction of sewers and their discharge into a creek is permissory and confers no right to appropriate property without compensation, nor does it confer a right to commit a nuisance. (Sammons v. City of Gloversville, 175 N. Y. 346.) (1903.)

Before a person can be punished for a contempt in disobeying an order he must have had notice of it, and an opportunity to be heard before a court clothed with authority to act and decide the question involved. (Goldie v. Goldie, 77 App. Div. 12.) (1902.)

The court has no power to punish husband's refusal to obey an order directing payment of alimony and counsel fees by striking out his answer and refusing to allow him to defend the suit. (Sibley v. Sibley, 76 App. Div. 132.) (1903.)

Where the default of a taxpayer is caused by the failure of a public officer or his clerks to render a proper statement of the unpaid taxes a sale made for unpaid taxes omitted from the statement does not operate to deprive the owner of his title. A tax deed cannot by legislative action be made conclusive evidence of title where the proceedings upon which it is based are so fatally defective that no title passes at all. (Wallace v. McEchron, 176 N. Y. 424.) (1903.)

An easement is a constitutional right of property which cannot be taken from its owner without just compensation, and statutes providing that buildings and other erections shall not be constructed within thirty feet from the side line of the street is unconstitutional. (People ex rel. Dilzer v. Calder, 89 App. Div. 503.) (1903.)

Where a water works company organized under the transportation corporations law for the purpose of supplying water to towns and villages lying upon opposite sildes of a city has procured rights of way through the towns, and entered into contract with a railroad company to use its right of way through the city and has entered into contracts for construction of plant and supplying water, legislation intended to deprive it of its vested to use the right of way through the city so obtained is unconstitutional. (Rochester & L. O. W. Co. v. City of Rochester, 176 N. Y. 36.) (1903.)

Provision of liquor tax law that certificate may be revoked on refusal of holder to present and file verified answer without taking proof of facts charged held unconstitutional. (Matter of Cullinan, 82 App. Div. 445.) (1903.)

Statute authorizing a proceeding to enforce payment of cancellation of lost certificate of deposit does not properly protect the rights of third persons in such certificates and is unconstitutional. (Matter of Cook, 86 App. Div. 586.) (1903.)

Where a prisoner's counsel upon refusal of a motion for adjournment withdrew from the case and refused to take any further part in the trial a judgment of conviction was reversed on appeal on the ground that the constitutional right of trial had been denied to the defendant who was an Italian and appeared unable to understand the proceedings. (People v. Calabur, 91 App. Div. 529.) (1904.)

Section 33 of the forest, fish and game law prohibiting the possession of certain birds is unconstitutional in so far as it assumes to declare unlawful the possession of birds purchased prior to the time the amendment took effect, and when their possession was lawful. (People v. Cohen, 91 App. Div. 89.) (1904.)

A statute which prevents an individual from pursuing a lawful vocation is a deprivation of liberty within the meaning of this section. The provision of the agricultural law which permits farmers to manufacture and deal in cider vinegar which does not contain the standard amount of acetic acid while prohibiting others from manufacturing and dealing in such vinegar is unconstitutonal. (People v. Windholz, 92 App. Div. 569.) (1904.)

While the state is primary owner of the fish and game in the state and may prescribe conditions for its capture and subsequent possession, fish and game procured without and brought within the state is private property to which the owner has absolute title, and the state cannot question its possession or proper use. Section 141 of the forest, fish and game law prohibiting the possession of fish or game coming from without the state is unconstitutional. (People v. A. Booth & Co., 42 Misc. Rep. 321.) (1904.)

The legislature has power to cure retrospectively defective or irregular proceedings to levy, assess and collect taxes provided no injustice be inflicted thereby; it also has power to exempt certain classes of property from taxation by retroactive legislation. The taxing power of the legislature is practically absolute except as restrained by constitutional limitations. (Matter of Rochester Trust Safe Deposit Co., 42 Misc. 581.) (1904.)

By taking advantage of the consolidation provisions of the railroad law railroad companies become subject to all the provisions of the railroad law, and waived the privileges in regard to fares, if any, possessed by them under prior laws. (Topham v. Interurban St. Ry. Co., 42 Misc. Rep. 503.) (1904.)

Private Property for Public Use.

Property cannot be taken by act of legislature for a purpose not of public nature. (Powers v. Bergen, 6 N. Y. 358, 367; Matter of City of Buffalo, 46 St. Rep. 81.)

Lands owned by a private individual or corporation and devoted to use as a private cemetery may be condemned for public use. (Matter of Bd. of Street Opening, 133 N. Y. 329.)

A law depriving an owner of property of its beneficial use and free enjoyment or imposing restraints materially affecting the value, without legal process or compensation, is unconstitutional. (Forster v. Scott, 136 N. Y. 577.)

The owner of lands adjoining a navigable river in which tide ebbs and flows has no property in the land below high-water mark and is not entitled to compensation for the taking for a public use. (Gould v. Hudson R. R. Co., 6 N. Y. 522, distinguished in Rumsey v. N. Y. & N. E. R. R. Co., 114 N. Y. 423, 429, and overruled in id., 133 N. Y. 79, 85.)

Right to maintain a watercourse is "property" protected by the constitution and cannot be impaired without compensation. (Arnold v. Hudson R. R. Co., 55 N. Y. 661.)

The right to enjoy free from smoke, gas, steam, cinders, etc., caused by the operation of an elevated road is properly within the constitutional meaning and cannot be taken without compensation. (Abendroth v. Manhattan Ry. Co., 19 Abb. N. C. 247.)

The owner of gypsum in lands over which highway runs, who is not owner of land, is entitled to compensation. (People ex rel. v. Eldredge, 3 Hun, 541.)

A stream in which riparian owners have vested rights is private property and cannot be made a public highway by statute without compensation. (Morgan v. King, 35 N. Y. 454.)

Right to maintain a toll-bridge is private property. (Matter of Hamilton Avenue, 14 Barb. 405.) But diminution of its value by opening a free bridge in a neighborhood is not a "taking" within the constitutional provision. (Id.)

Franchise of a street railroad is property and entitled to constitutional protection. (People v. O'Brien, 111 N. Y. 1, 40.)

The power to take private property for public use is inseparable from the sovereign power of the state, and the constitution merely regulates it by requiring that just compensation be made to the owner. (Matter of Furman Street, 17 Wend. 649.)

The right to take may be delegated by the sovereignty for a public use. (Bloodgood v. The Mohawk & H. R. R. Co., 18 Wend. 59.)

The statute granting a railroad corporation the right to take, need not specify the land to be taken, but can delegate to the corporation the right to choose. (Buffalo & N. Y. R. R. Co. v. Brainerd, 9 N. Y. 100.)

If use be public legislatures are sole judges as to whether benefit is such as to warrant delegation of power. (Matter of Townsend, 39 N. Y. 171.) And an act is not unconstitutional because the power is delegated to a foreign corporation. (Id.)

There must be a public use to authorize a taking. (In re Albany Street, 11 Wend 148, In re John and Cherry Streets, 19 id. 676; Varick v. Smith, 5 Paige, 137; Cochran v. Van Suiley, 20 Wend. 365; Bloodgood v. The Mohawk & Hudson R. R. Co., 18 id. 59; Embury v. Connor, 3 N. Y. 511.)

Legislature may authorize a municipality to take for public use. (Heyward v. Mayor, etc., 7 N. Y. 314.)

Taking land for a railroad is a public use. (Buffalo & N. Y. R. R. Co. v. Brainerd, 9 N. Y. 100; People v. Law, 34 Barb. 494.)

But under the provisions of the general railroad act a corporation can take only so much and such land as the proper execution of its corporate purposes requires and renders necessary. (Matter of South Beach R. R. Co., 119 N. Y. 141.)

Construction of a street surface railroad in a city street is not such an infringement of the vested rights of an abutting owner as to require compensation. (Clark v. Rochester City & B. R. R. Co., 18 St. Rep. 903, citing People v. Kerr, 27 N. Y. 188; Killinger v. Forty-second St. R. R. Co., 50 id. 206; Mahady v. Bushwick R. R. Co., 91 id. 148.)

Use of street by electric light company is a public use to which street may be devoted and compensation is unnecessary. (People ex rel. v. Thompson, 65 How. Pr. 407.)

Use by the public of an elevated railroad comes within the limits of what is known as a public use. (Spader v. N. Y. El. R. R. Co., 3 Abb. N. C. 467.)

Laying of gas pipes to supply gas to cities and towns for lighting streets and public places is for a public use. (Bloomfield Gas Co. v. Richardson, 63 Barb. 437.)

Acts passed authorizing supply of water to city of Middletown for "public and private purposes" are constitutional. Words "and private purposes" are surplusage. (Matter of Middletown, 82 N. Y. 196. See also Stamford Water-Works Co. v. Stanley, 39 Hun, 424.)

Preservation of public health is a public purpose and act providing for drainage (L. 1896, chap. 688) is constitutional. (Matter of Ryers, 72 N. Y. 1.)

Provision in an act authorizing condemnation of land for park purposes that city may sell such lands when no longer necessary for park purposes does not render act unconstitutional as taking for a use not public. (Matter of City of Rochester, 137 N. Y. 243.)

The question whether the use is a public one is a judicial one, to be determined by the courts. (Matter of Deanville Cemetery, 66 N. Y. 569; Pocantico Water-Works Co. v. Bird, 130 id. 249.) The grant by the legislature of the right to take is not conclusive evidence that the use is a public one. (Id.)

A possible limited use by a few persons, and then not as a right, but by way of permission or favor, is not sufficient to authorize the taking of private property against the will of the owner. (Matter of the Split Rock Cable Road Co., 128 N. Y. 408.)

The erection of an elevated railroad in a street, which will to some extent obscure the light of the abutting premises and

depreciate their value, is a taking of such property, requiring compensation. (Story v. N. Y. El. R. R. Co., 90 N. Y. 123.)

Where a highway is taken for railroad purposes compensation must be made to owners of fee. (Trustees, etc. v. Auh. & Roch. R. R. Co., 3 Hill, 567; Fletcher v. Auh. & Syr. R. R. Co., 25 Wend. 462; Bloodgood v. Mohawk & Hudson R. R. Co., 18 id. 9; Brown v. Cayuga & Susq. R. R. Co., 12 N. Y. 486.)

Occupancy and use of lands for purpose of constructing and maintaining ditches is such an interference with the proprietary interests of the owner as to entitle him to compensation for the taking. (People ex rel. v. Haines, 49 N. Y. 587.)

Act which invades ownership must provide for a certain definite and adequate source and manner of payment. (Matter of Mayor, etc., of New York, 99 N. Y. 569; Sage v. City of Brooklyn, 89 id. 189; Kelly v. Mayor, etc., of New York, 6 Misc. Rep. 516.)

Compensation need not be paid before appropriation of land. (Bloodgood v. Mohawk & Hudson R. R. Co., 18 Wend. 9.)

It is sufficient if statute provides for securing the right of compensation; the actual making of such compensation is not a condition precedent. (Patten v. Elevated R. R. Co., 3 Abb. N. C. 306.)

Provision in act providing for compensation one year after damages are appraised does not render act unconstitutional. (Allen v. Village of Northville, 39 Hun, 240.)

Payment of compensation may be deferred until it can be raised by tax. (Hammersly v. Mayor, etc., 56 N. Y. 533; Chapman v. Gates, 54 id. 132.)

Act authorizing entry for preliminary survey of railroad before compensation is made is constitutional, if it makes suitable provision for compensation in case land is subsequently taken. (Polly v. Sara. & Wash. R. R. Co., 9 Barb. 449.)

Provisions of village charter for local special assessment, and not imposing a duty upon the village to pay for land taken, are unconstitutional. (Matter of So. Market Street, 67 Hun, 594.)

The right to acquire property for public purposes and defer payment cannot be vested in a private corporation. (Dusenbury v. Mutual Tele. Co., 11 Abb. N. C. 440.)

Act of legislature (L. 1853, chap. 62) authorizing highways to be laid across railroad tracks is not taking property without compensation. (Albany Nor. R. R. Co. v. Brownell, 24 N. Y. 345.)

After judgment has been rendered in an action, the fruits thereof are rights of property, and an act of legislature (§ 1440, Code of Civil Procedure) nullifying such judgment, is unconstitutional. (Gilman v. Tucker, 128 N. Y. 190).

Municipal corporation may pass ordinance compelling removal of snow and ice, and penalty for failure is not depriving of property without compensation. (Village of Carthage v. Frederick, 122 N. Y. 268.)

As to distinction between taxation and taking private property without compensation. (People ex rel. v. Mayor of Brooklyn, 4 N. Y. 419; Sun Mutual Ins. Co. v. Mayor, etc., 8 id. 241; Brewster v. City of Syracuse, 19 id. 116.

An assessment for benefit to pay the expense of a local improvement falls within legitimate use of taxing power. (Stryker v. Kelly, 7 Hill, 9; People ex rel. v. Lawrence, 41 N. Y. 123, 137.)

Act authorizing town to raise money by taxation for purchase of stock of railroad company is for a public improvement and is in no sense depriving a resident of his property without compensation. (Grant v. Courter, 24 Barb. 232; Bank of Rome v. Rome, 18 N. Y. 38.)

Assessments for repaving streets, a species of taxation not covered by the constitutional prohibition. (Moran v. City of Troy, 9 Hun, 540.)

Legislature may impose a local tax for construction of canal. (Thomas v. Leland, 24 Wend. 65.)

Confirmation of an irregular and invalid assessment is not taking private property without compensation. (Mann v. City of Utica, 44 How. Pr. 334.)

A law authorizing assessments without reference to benefits would be unconstitutional as taking private property without compensation. (Stuart v. Palmer, 74 N. Y. 183.)

Nuisances may be abated by act of legislature without violating the provisions of the constitution. (Coe v. Shultz, 47 Barb. 65; Kelly v. Mayor, etc., of N. Y., 6 Misc. Rep. 516.)

Act regulating the use of wharves in a seaport does not deprive the owners of any of their rights or privileges. (Roosevelt v. Godard, 52 Barb. 533.)

This constitutional protection may be waived by the owner. (Embury v. Conner, 3 N. Y. 511; People v. Turner, 117 id. 227; Matter of Hand Street, 55 Hun, 132.)

And the constitutional objection can only be raised by the owner. (People v. Turner, 117 N. Y. 227; Waterloo Wooeln Mfg. Co. v. Shanahan, 128 id. 345.)

The question of just compensation is judicial in its nature and must be conducted in a court having jurisdiction over the subject-matter. (In re City of Buffalo, 139 N. Y. 422.)

The floating of logs is a public use, and the legislature having determined the necessity for the exercise of eminent domain, the validity of the act is not open to question. (Matter of Burns, 155 N. Y. 23.) (1898.)

When damages in the exercise of the power of eminent domain have been ascertained in the constitutional method, the legislature may, in its discretion, determine the extent to which decision is reviewable on appeal. (Matter of De Camp, 151 N. Y. 557.) (1897).

Special assessments for opening streets are laid in the exercise of the taxing power and not of eminent domain, and the question as to the extent of the exercise of this power is one of state policy of which the legislature is the sole judge. (Dyke Meadow Land & Improvement Co. v. Cook, 3 App. Div. 164.) (1896.)

The provision of the statute pertaining to the acquisition of the fee and easements in discontinued streets and avenues, being incidental and necessary to the public purpose of laying out and opening of new streets and avenues of a city according to the plan adopted, are constitutional. (Matter of Mayor, 157 N. Y. 409.) (1898.)

The power of taxation, the police power and the power of eminent domain underlie the constitution and rest upon necessity because there can be no effective government without them. The state has all the power of eminent domain there is and all that any sovereign has, subject to the limitations of the constitution. The language of this section does not confer the power of eminent domain, but recognizing its existence surrounds it with proper limitation. There is no limitation upon the exercise of the power, except that the use must be public and compensation must be made and due process of law observed. That consists in the observance of those safeguards which time and experience have shown are necessary to protect the citizen in the enjoyment of life, liberty and property. Where the state exercises the right of eminent domain the citizen has the right to a day in court on the question of compensation but has no right to a day in court on the question of appropriation by the state unless some statute requires it. (People v. Adirondack R. R. Co., 160 N. Y. 225.) (1899.)

Chapter 207, Laws 1851, amended by chapter 712, Laws 1894, declaring the north branch of Moose river a public highway

makes no provision for compensation to the riparian owners and is unconstitutional. (De Camp v. Dix, 159 N. Y. 436.) (1899.)

Chapter 533 of the Laws of 1880 and chapter 363, Laws 1893, which declare certain streams to be public highways for the floating of logs, do not make proper provision for compensation to the owners of the beds of the streams for the right of passage over their property or for taking their property for a logway and are unconstitutional. (Brewster v. Rogers Co., 42 App. Div. 343; affd., 169 N. Y. 73.) (1901.)

A statute authorizing a city to take private property by eminent domain and not providing for payment therefor before or concurrently with the taking is constitutional where it does provide a sure, sufficient and convenient remedy by which the property-owner can coerce payment. (Connelly v. Van Wyck, 35 Misc. Rep. 746.) (1901.) (Matter of Mayor of New York, 72 N. Y. Supp. 378.) (1901.)

A charter provision fixing the amount of local assessments upon abutting property at a definite sum per front foot is not unconstitutional because it fails to provide for a hearing upon the justice of the principle on which the assessment is based. (People ex rel. Scott v. Pitt, 169 N. Y. 521.) (1902.)

Where private property is acquired by eminent domain the provision for payment must be secure and certain to the property-owner. He cannot be relegated to doubtful responsibility of private corporation or an individual. Where a statute does not provide that property right acquired must be for general public use but that each person shall pay only for a private easement it must be construed as granting an additional not an exclusive remedy. (Brewster v. Rogers Co., 169 N. Y. 73.) (1902.)

Chapter 565, Laws of 1903, declaring Deer river a public highway for the purpose of floating logs, held constitutional. (Matter of Wilder, 90 App. Div. 262.) (1904.)

Section 45 of the membership corporations law authorizing the acquiring by cemetery associations of additional lands by eminent domain held constitutional. (Matter of Lyons Cemetery Assn., 93 App. Div. 19.) (1904.)

Compensation for taking private property; private roads; drainage of agricultural lands.— § 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compen-

sation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

[Section 7 of article I of the amended constitution of 1846, amended. The last sentence, relating to the drainage of agricultural lands, is new.]

The jury referred to in this section means a jury drawn in the ordinary way, but a majority of them may render a decision. (Cruger v. Hudson R. R. Co., 12 N. Y. 190.)

The provision requiring compensation for private property taken for public use to be determined by a jury means a jury drawn in the same way as those required in the courts, and a provision of a statute requiring a jury to be selected by village trustees from a list prepared by them and composed of persons who need not possess the qualifications required by the courts, is not such a jury as is required by the constitution. (People ex rel. Eckerson v. Trustees of Haverstraw, 151 N. Y. 75.) (1896.)

This section intends that one jury or one commission conducted in a proper manner is to determine finally the rights of the parties where land is taken for a public use. (Schneider v. City of Rochester, 8 Misc. Rep. 652.)

A statute authorizing the common council to appoint as-

sessors to determine the damages is unconstitutional: (House v. City of Rochester, 15 Barb. 517; Clark v. City of Utica, 18 id. 451.)

This section is not a restriction upon the legislative power to provde for a reassessment of damages, by a jury, after they have been once assessed by commissioners. (Clark v. Miller, 54 N. Y. 528.)

The constitutional provision as to the manner of ascertaining the compensation to be paid for private property when taken for a public use, may be waived by the owner. (Matter of Hand Street, 55 Hun, 132; Baker v. Braman, 6 Hill, 47; Matter of Village of Middletown, 82 N. Y. 196; Embury v. Connor, 3 id. 511; Sherman v. McKeon, 38 id. 266; Menges v. City of Albany, 56 id. 374.)

This section does not apply to a case where property is taken by the state for canal purposes. (Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.)

A statute that provides that on an appeal from an award of commissioners the court may increase or diminish the amount of compensation to landowners is unconstitutional under this section. (Matter of Malone Water-Works Co., 38 State Rep. 95.)

The creation of a new road which answers as a substitute for a private road does not affect the title of the party to the private road. (Crounse v. Wemple, 29 N. Y. 540.)

In relation to drainage, see People ex rel. Pullman v. Henion, 64 Hun, 471, and cases cited.

Laws of 1895, chap. 384, passed pursuant to the last sentence of this section, held unconstitutional. (Matter of Tuthill, 36 App. Div. 492.) (1899.)

It is within the province of the legislature to add to and extend the powers of commissioners appointed by the court. (Matter of Curren, 25 Misc. Rep. 432; affd., 38 App. Div. 82.)

The clause relating to the drainage of agricultural lands is not in conflict with the fourteenth article of the federal constitution. (Matter of Tuthill, 36 App. Div. 492.) (1899.)

The jury provided by the highway law (chapter 568, Laws 1890), is not such a jury as is contemplated by this section. (Berridge v. Shultz, 32 Misc. Rep. 444.) (1900.)

A statutory provision authorizing the appointment of commissioners by a county judge or justice of the supreme court but which does not require the taking of private property against the will of the owner is constitutional. But a failure to provide for a notice of the assessment to the property-

owners as well as the right to be heard is fatal. Neither a justice of the supreme court nor a county judge constitutes a court of record. (Matter of Lent, 47 App. Div. 349.) (1900.)

Where the owner in equity sues to restrain continuing trespass a judgment requiring him to convey property upon payment of damages may be given and he cannot object to denial of right to trial by jury because by resorting to equity court he waives such right. (Westphal v. City of New York, 75 App. Div. 252.) (1902.)

Freedom of speech and press; criminal prosecutions for libel.—§ 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

[Section 8 of article I of amended constitution of 1846, without change.]

This section applies only to criminal prosecution. (George v. Jennings, 4 Hun, 66.)

The act prohibiting advertising of lotteries is constitutional. (Hart v. People, 26 Hun, 396.)

The erection and exhibition of a statute of a deceased person does not come within the provisions of this section, and its erection and exhibition may be enjoined where they will cause pain and distress to the relatives of the deceased. (Schuyler v. Curtis, 30 Abb. N. C. 376; 24 N. Y. Supp. 509.)

A by-law of a news association prohibiting its members from receiving or publishing the regular news dispatches of any other news association covering a like territory, is not a violation of

this section. (Matthews v. Associated Press of N. Y., 61 Hun, 199.)

Provisions of this section protect the liberty, not the licentiousness, of the press, and no restriction is thereby imposed upon the power of the legislature to punish the publication of matter which is injurious to society according to the standard of the common law. (People v. Most, 171 N. Y. 423.) (1902.)

Right to assemble and petition; divorce; lotteries, pool-selling and gambling, laws to prevent.—§ 9. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling hereafter be authorized or allowed within this state; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

[Section 10 of article I of the amended constitution of 1846, amended. The part of this section relating to pool-selling, book-making and other kinds of gambling is new. By the amendment the act known as the Ives pool bill (L. 1887, chap. 479) and the acts amendatory thereof are rendered invalid.]

Any distribution of prizes by chance is a lottery. (Rolfe v. Delmar, 7 Rob. 80.)

Payment of prizes in money is not necessary to constitute a lottery; it is a lottery if the prizes are payable in lands and chattels. (Governors of Almshouse v. American Art Union, 7 N. Y. 228.)

This section applies to the sale of foreign lottery tickets in this state. (Charles v. People, 1 N. Y. 180.)

Where the intent was to sell packages of candy for more than their value, the purchasers taking the chance of getting a package containing a ticket entitling him to a prize, it is a lottery. (Hull v. Rugeles, 56 N. Y. 424.) So is a "gift-concert" enterprise. (Negley v. Devlin, 12 Abb. [N. S.] 210.) So is the game of "playing policy." (Wilkinson v. Gill, 74 N. Y. 63.)

When any pecuniary consideration is paid, determined by lot or chance, according to some scheme held out to the public, what and how much he who pays the money is to receive for it, that is a lottery. (People v. Noelke, 94 N. Y. 137; Kohn v. Koehler, 96 id. 362, 367; Irving v. Britton, 8 Misc. Rep. 201.)

The provision of the racing law L. 1895, chap. 570, providing an exclusive penalty for the making or recording of a wager on an authorized race course is not in violation of this section. (People ex rel. Sturgis v. Fallon, 152 N. Y. 1.) (1897.)

The offering or paying of premiums or prizes to winners of a horse race by the officers of an authorized racing association, the owners of the horses participating in the race paying an entrance fee into the general treasury of the association, and the premiums being paid out of its general funds, does not constitute gambling within the meaning of this section. (People ex rel. Lawrence v. Fallon, 152 N. Y. 12.) (1897.)

The court of another state which by the law of that state has power to amend a decree of divorce rendered therein against a resident of this state by the insertion of provisions for alimony acquires jurisdiction to render a final decree for the payment of alimony against him where he was personally served in this state with notice thereof and made a general appearance and contested it, although the decree of divorce was invalid as to him because rendered without jurisdiction. The courts of this state will give full credit for the amount fixed at the time of its rendition as a judicial debt, but will not permit the plaintiff to invoke the equitable remedies provided by the Code for enforcement of decree or enforce decree as to future payments. (Lynde v. Lynde, 162 N. Y. 405.) (1900.)

Escheats.— § 10. The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail, from a defects of heirs, shall revert, or escheat to the people.

[Section 11 of Article I of the amended constitution of 1846, without change.]

For proceedings before the commissioners of the land office for the release of escheated lands, see L. 1894, chap. 317.

Lands do not escheat if there be a remote heir capable of taking. (Jackson v. Jackson, 7 Johns. 214.)

The statutes of 1833 and 1834 relating to the relinquishment of escheats are constitutional. (Englishbe v. Helmuth, 3 N. Y. 294.)

Escheats are subject to the liens of the creditors. (Mooers v. White, 6 Johns. Ch. 360.)

Escheats are subject to outstanding life estates. (People v. Conklin, 2 Hill, 67.) And to purchase-money mortgages. (Farmers' Loan & Trust Co. v. People, 1 Sandf. Ch. 139.)

Where lands escheat to the state, the state may grant the same without actual entry or inquisition, even though it be held adversely by one claiming title thereto. (McCaughal v. Ryan, 27 Barb. 376.)

As to the effect of alienage upon titles to lands. (Leggett v. Dubois, 5 Paige, 114; Johnson v. Hart, 3 Johns. Cas. 322; People v. Conklin, 2 Hill, 67; Jackson v. Etz, 5 Cow. 314; Johnston v. Spicer, 107 N. Y., 185, containing a history of legislation on subject of escheats.)

Feudal tenures abolished.— § 11. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

[Section 12 of article I of the amended constitution of 1846, without change.]

Allodial tenures.— § 12. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

[Section 13 of artcile I of the amended constitution of 1846, without change.]

Grants by the French government are not a legal title. (Jackson v. Ingraham, 4 Johns. 163.)

The title to lands under water in navigable rivers where the tide ebbs and flows is in the people. (Gould v. Hudson R. R. Co., 6 N. Y. 522; Kerr v. W. S. R. R. Co., 127 N. Y. 269.)

Leases of agricultural lands.— § 13. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

[Section 14 of article I of the amended constitution of 1846, without change.]

A lease of agricultural lands for twelve years, with a covenant of renewal for twelve years, if the lessor should live, is void as to the renewal, but valid for the original term. (Hart v. Hart, 22 Barb. 606.)

In consideration of a covenant to support the plaintiff for life, she conveyed her real property for life, and certain personal estate, and agreed to devise a certain parcel of land; held not a lease under this section. (Stephens v. Reynolds, 6 N. Y. 454.)

To bring a lease within this section, it must reserve rent, as rent, payable in money or otherwise at stated periods. A grant or lease of land for life for a specified consideration, whether payable in installments or at one time, is not within the meaning of this provision. (Parsell v. Stryker, 41 N. Y. 480.)

Agricultural land may be leased for other than agricultural purposes for a longer period than twelve years if the lease contains a restriction as to their use. (Odell v. Durant, 62 N. Y. 524.

Where two leases are executed at the same time, for the same lands, for eight and twelve years respectively, both are void. (Clark v. Barnes, 76 N. Y. 301.)

A lease by a doweress for a certain term, and if at the expiration she be living, then for her natural life; held, a sale and, therefore, not within this section. (Rutherford v. Graham, 4 Hun, 796.)

A judgment of foreclosure estops the parties from setting up that the lease was void because of agricultural lands leased for longer than twelve years. (Witherbee v. Stover, 23 Hun, 27, distinguishing the case of Odell v. Durant, 62 N. Y. 524.)

This prohibition does not amount to a prohibition of the

creation of estates for life in such lands. (Parish v. Rogers, 20 App. Div. 279.) (1897.)

A lease of the right to mine and carry away iron ore found under the surface of a farm and as incidental thereto to erect and build necessary structures and roads, held not to be a lease of agricultural land. (Mass. Nat. Bank v. Shinn, 163 N. Y. 360.) (1900.)

Fines and quarter-sales abolished.— § 14. All fines, quarter-sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made shall be void.

[Section 15 of article I of the amended constitution of 1846, without change.]

A reservation, in a conveyance in fee, of a right of purchase by the grantor, or his representatives, where the property is offered for sale by the grantee or his representatives, and a reservation of a right to a portion of the sale-money when the property is sold, are illegal restraints upon the power of alienation. (DePeyster v. Michael, 6 N. Y. 467.)

Purchase of lands of Indians.— § 15. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made of, or with the Indians, shall be valid, unless made under the authority, and with the consent of the Legislature.

[Section 16 of article I of the amended constitution of 1846, without change.]

While the word "Indians" is used in the plural it includes the purchase from a single Indian. (Goodell v. Jackson, 20 Johns. 693; Lee v. Glover, 8 Cow. 189.)

The policy of the state has been to prohibit all private dealings with and purchases from Indians, except under the supervision of public officials and with the consent of the legislature. (Seneca Nation v. Christie, 126 N. Y. 122; Fellows v. Denniston, 23 id. 420.)

Common law and acts of the colonial and State Legislatures.— § 16. Such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

[Section 17 of article I of the amended constitution of 1846, amended, by striking out the part of such section 17 as related to the appointment and duties of the codification commissioners.]

Only so much of the common law of England was in force in this state as was applicable to our circumstances and condition, and therefore the English doctrine of easements in light and air never prevailed. (Myers v. Gemmel, 10 Barb. 537.)

The English statute of charitable uses is no part of the law of this state. (Dutch Church in Garden St. v. Mott, 7 Paige's Ch. 77; Holland v. Alcock, 108 N. Y. 312, citing Williams v. Williams, 8 id. 525, and Bascom v. Albertson, 34 id. 584, and containing a collation and discussion of the nature and history of the English doctrine of charitable uses.)

The statute law of the mother country, when introduced by consent, became part of the common law of this state. (Bogardus v. Trinity Church, 4 Paige's Ch. 177, 198.)

An English statute which by this section is made the common law of the state will be presumed to be the common law of another state, in absence of proof to the contrary. (Cahill Iron Works v. Pemberton, 30 Abb. N. C. 450.)

Grants of land made by the king of Great Britain since 1775; prior grants.— § 17. All grants of land within this State, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligation of any debts, contracted by the State or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

[Section 18 of article I of the amended constitution of 1846, without change.]

This section by declaring null all patents of lands in the state granted by the king subsequent to October 14, 1775, impliedly confirmed those granted prior to that date. (People v. Clark, 10 Barb. 120; affirmed on appeal, 9 N. Y. 349.)

This section is not a restraint upon legislative power. Its object was simply to leave the charters referred to intact as far as the operation of the constitution itself was concerned. (Demarest v. Mayor, 74 N. Y. 161.)

L. 1873, chap. 335, abolishing the board of assistant aldermen of the city of New York, and transferring their powers and duties to the board of aldermen, is constitutional. (Id.)

Damages for injuries causing death.— § 18. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated;

and the amount recoverable shall not be subject to any statutory limitation.

[This section is new. By virtue of its provisions that part of section 1904 of the Code of Civil Procedure, limiting the amount of damages recoverable for negligence causing death, will be unconstitutional after January 1, 1895.]

[The abolition of the amount recoverable in actions for injury resulting in death did not affect accrued causes of action. (Isola v. Weber, 147 N. Y. 329.) (1895).

Employers' liability act is a general act which applies to all actions brought after its passage by a servant against his master to recover damages for personal injuries arising from the master's failure to supply proper and safe appliances for the use of the servant. The provision relative to notice only affects the remedy and does not destroy any right of action conferred by the common law or statute and is constitutional. (Gmaehle v. Rosenburg, 83 App. Div. 339.) (1903.)

ARTICLE II.

Qualification of voters.— Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy

thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

[Section 1 of article II of the amended constitution of 1846 amended by requiring a citizenship of ninety days, instead of ten, before election.]

Mere declaration does not constitute residence. The facts determine. (Silvey v. Lindsay, 107 N. Y. 59.)

Residence means the act of being seated or settled in a place. It imports not only personal presence in a place, but an attachment to it by those acts or habits which express the closest connection between a person and a place. (Matter of Collins, 64 How. Pr. 63.)

Residence may be acquired by living on a lighter attached to a pier. (Id.)

The legislature may affix ineligibility to office as a punishment for crime and not encroach upon the constitutional privilege of the elector (Barker v. People, 3 Cow. 686); or that no supervisor shall be superintendent of the poor. (People ex rel. Furman v. Clute, 50 N. Y. 451, 458.)

The right to vote is a political right and not within the privileges and immunities guaranteed to the citizen. (People v. Barber, 48 Hun, 198.)

A law prohibiting a person from voting who will not take an oath to the effect that he has always been faithful in his allegiance is unconstitutional. (Green v. Shumway, 39 N. Y. 425.)

A female is "a person not duly quailfied to vote under the laws of this state." (People v. Barber, 48 Hun, 198.)

A law authorizing women to vote for school commissioners is unconstitutional, school commissioners being "thereafter made elective by the people." (Matter of Gage, 141 N. Y. 112.)

The provisions of this section that an elector must vote in the election district of which he shall be a resident, does not prevent the legislature establishing a polling place outside of the limits of the election district. (People ex rel. Lardner v. Carson, 155 N. Y. 491.) (1898.)

The requirements as qualifications for voting at a village election, that voter or his wife must be owner of property and

assessed, are valid. The legislature having power to prescribe the qualifications where trustees are to be voted for or money is to be raised. (Spitzer v. Village of Fulton, 33 Misc. Rep. 257.) (1901.) (Affd., 172 N. Y. 285.) (1902.)

Arrest of registered elector while attempting to vote upon charge of false registration illegal. (People v. Hochstim, 76 App. Div. 25). (1902.)

Persons excluded from the right of suffrage.— § 2. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The Legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

[Section 2 of article II of the amended constitution of 1846, amended. The last sentence of the 1846 constitution was as follows: "The legislature of the session thereof next after the adoption of this section, shall, and from time to time thereafter may, enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime."]

(See Penal Code §§ 411, 41p, 41q; Election L., §§ 30, 111.)

One who has been convicted of a felony while a minor, and has served out his term before attaining majority, is disqualified as an elector. (Hamilton v. People, 57 Barb. 625. See People ex rel. Furman v. Clute, 50 N. Y. 451.)

Certain occupations and conditions not to affect residence.— § 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.

[Section 3 of article II of the amended constitution of 1846 amended by inserting after the word "asylum" the words "or other institution wholly or partly supported," and after the word "expense" the words "or by charity."]

Not applicable to fishermen who elect their residence in the place of their business. (1871.) (Opinion of Atty-Gen. 585.)

A prisoner though not strictly confined and under an irregular or illegal commitment cannot gain a voting residence. (People v. Cady [Ct. of App.], 60 N. Y. St. Rep. 474.)

The Soldiers' Home at Bath is an "asylum" hereunder. An inmate must find his voting qualifications in other facts than a declaration of his intention to reside there. (Silvey v. Lindsay, 42 Hun, 116, affirmed in 107 N. Y. 55.)

This section does not prevent a student from abandoning his previous home and of acquiring a residence at the place where

the seminary which he attends is situated. (Matter of Ward [Sp. T.], 29 Abb. N. C. 187.)

Registration and election laws to be passed.— § 4. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding state enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

[Section 4 of artcile II of the amended constitution of 1846 amended by adding all after the word "established."]

Manner of voting.— § 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

[Section 5 of article II of the amended constitution of 1846 amended by transposing the words "shall be by ballot" from after the word "citizen" to after the word "chosen," and by adding all after the word "ballot."]

The amendment of this section authorizes the legislature to adopt a mechancial device for recording and counting votes.

Supervisors may be elected by ayes and nays, or by a show of hands, or other division, if the legislature so authorizes. (People ex rel. Clancy v. Supervisors, 139 N. Y. 525, 528.)

Registration and election boards to be bi-partisan, except at town and village elections.— § 6. All laws creating, regulating or affecting boards of officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the Legislature may direct. Existing laws on this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

[New.]

(See Laws 1894, chapter 348.)

ARTICLE III.

Legislative powers.— Section 1. The legislative power of this State shall be vested in the Senate and Assembly.

[Section 1 of article III of the amended constitution of 1846 amended by changing the word "a" before "senate" to "the." This amendment was not referred to by the revisers, but as the people voted on the "Revised Constitution," it seems to have been effected.]

The constitution confers upon the legislature the whole legislative power, unlimited save by the restrictions of the state and federal constitutions. (People v. West, 106 N. Y. 293; People

ex rel. v. Keeler, 99 id. 463; Bertholf v. O'Reilly, 74 id. 509; People ex rel. v. Flagg, 46 id. 401; Bank of Chenango v. Brown, 26 id. 467; People v. Learned, 5 Hun, 626.)

If no authority were delegated to the legislature by the constitution it would still have the power to exercise and declare the will of the people. (People v. Young, 18 App. Div. 162.) (1897.)

Subject to the limitations of the constitution, the legislature may change or abrogate a right derived from legislative authority (People ex rel. McCarthy v. French, 10 Abb. N. C. [Gen. T.] 418); may interfere with vested rights (Butler v. Palmer, 1 Hill, 324); may directly control the local public affairs of any civil division of the state. (People v. Tweed, 63 N. Y. 202.)

Under our government, the powers are divided into legislative, judicial and executive branches, each restricted to the exercise of its own legitimate functions; and unless a constitutional warrant can be found, no one of them should be permitted to be made the domain of the other. (People ex rel. Sabold v. Webb [Sp. T.], 23 N. Y. St. Rep. 325).

The legislature may provide that an act shall take effect on the happening of a future event, certain or uncertain (Corning v. Greene, 23 Barb. 33; People v. Fire Association, 92 N. Y. 311); but, except as authorized by the constitution, cannot divide the responsibility of enacting laws, as by referring their enactment to a popular vote (Thorne v. Cramer, 15 Barb. 112; Bradley v. Baxter, 15 id. 122; People ex rel. v. Stout, 23 id. 349; Corning v. Greene, id. 33; Barto v. Himrod, 8 N. Y. 483); but it may enact that the electors of a village may determine what parts of the general village law shall apply to their village (Bank of Chenango v. Brown, 26 N. Y. 467); or that a provision is not to be effective until approved by a vote of the inhabitants of a municipality. (Bank of Rome v. Rome, 18 N. Y. 38.)

The legislature cannot declare in advance the effect of subsequent legislation on existing statutes. (Mongeon v. People, 55 N. Y. 613.)

The legislature cannot control future legislation upon matters of a public interest. (People v. L. I. R. R. Co., 9 Abb. N. C. 181.)

An act authorizing the supreme court, on application, to order gates to be erected by a railroad company at a certain street, is not a delegation of legislative power. (People v. L. I. R. R. Co., 134 N. Y. 506.)

The legislature may determine whether a special act is neces-

sary. (People v. Bowen, 21 N. Y. 517; U. S. Trust Co. v. Brady, 20 Barb. 119.)

The taxing power of the legislature for public purposes is unlimited, except as restrained by the constitution. In re Van Antwerp, 56 N. Y. 261; McLaughlin v. Miller, 124 id. 510; State v. County of Kings, 125 id. 312.) Thus it may cure defects and confirm taxes where there was jurisdiction to impose them. (People v. McDonald, 69 id. 362; Terrel v. Wheeler, 123 id. 76; Cromwell v. MacLean, 123 id. 474.) It may confirm a tax imposed where the assessment omits property which might originally have been exempted. (Van Deventer v. Long Island City, 139 id. 133.) It may delegate to a municipality the power to tax for the expenses of the local government. (Matter of Petition of Zborowski, 68 id. 88.)

The power of the legislautre to apportion taxes is as broad as the taxing power itself. (Matter of Sackett St., 4 Hun, 92, affirmed in 74 N. Y. 95.)

The legislature may authorize the land of the state to be assessed for local improvements. (Hassan et al. v. Rochester, 67 N. Y. 528.)

The legislature may sanction an improvement or expenditure which it could previously authorize, and authorize an assessment therefor. (Matter of Sackett St., 74 N. Y. 95.) It cannot compel an adjoining town to be taxed for the payment of debts previously contracted by a city. (Matter of Assessment, 60 N. Y. 398.)

The legislature may make a tax deed of the comptroller presumptive evidence that the sale was regular. (Hand v. Ballou, 12 N. Y. 541.)

The legislature cannot tax imports (People v. Maring, 3 Keyes, 374); cannot tax national banks (People ex rel. Gallatin Nat. Bank v. Commissioners, 67 N. Y. 516); but can tax capital employed in the business exporting cotton to foreign countries. (People ex rel. v. Bd. of Tax Comrs. of N. Y., 10 Hun, 255.)

The legislature may ratify and create a liability on the part of the state for property voluntarily furnished or valuable services rendered at request of a state officer. (O'Hara v. State, 112 N. Y. 146.) It may relinquish a claim of the state or waive its remedies for fraud. (People v. Stephens, 71 N. Y. 527.) It may enlarge the time within which a claim against the state may be filed, if it would not already be outlawed as between individuals. (Parmenter v. State, 135 id. 154.)

It cannot confer jurisdiction on the court of claims to hear or allow a claim against the state, which, as between individuals,

would be barred by the statute of limitations. (McDougall v. State, 109 N. Y. 73; Gates v. State, 128 id. 221.)

The legislature may validate the act of a municipality, invalid because of procedure, where the municipality had jurisdiction of the subject-matter (Tifft v. City of Buffalo, 82 N. Y. 204); may ratify an ultra vires contract for a public purpose of a municipality (Brown v. Mayor, etc., 63 N. Y. 239); may authorize local regulations and commit the power of making them to local bodies or the people of localities (Tanner v. Albion, 5 Hill, 121; Clarke v. City of Rochester, 28 N. Y. 605); may authorize a municipality to regulate hawking and peddling (Village of Stamford v. Fisher, 140 id. 187); may establish civil divisions (People ex rel. Wood v. Draper, 15 id. 532); may erect a county (Rumsey v. People, 19 id. 41), but only when it can provide for the new county taking its place in the political and judicial divisions of the state (Lanning v. Carpenter, 20 id. 447); may authorize a village to dissolve its incorporation (Blauvelt v. Village of Nyack, 9 Hun, 153); may distribute the powers of local government between county and city (People ex rel. Taylor v. Dunlap, 66 N. Y. 162); may provide that claims be presented to a city council for a certain time before action is brought (Reining v. City of Buffalo, 102 id. 308); may validate a claim against a town, supported by a moral consideration, but irregular. (Wrought Iron Bridge Co. v. Attica, 119 id. 204.)

The legislature cannot vest the performance of specific local and municipal duties in a state board. (People v. Acton, 48 Barb. 524.)

The legislature has no judicial authority and cannot control the courts in respect to the construction of statutes arising before the declaratory statute. (Ins. Co. v. Jenkins, 16 N. Y. 424). It may conduct a legislative but not a judicial inquiry. (People ex rel. v. Webb, [Sp. T.], 23 N. Y. St. Rep. 325; People v. Otis, 90 N. Y. 48.)

The legislature may create inferior local courts (Sill v. Village of Corning, 15 N. Y. 297); may authorize city courts to issue writs of mandamus (People ex rel. v. Green, 58 id. 295); may regulate their jurisdiction, within constitutional limitations. (Butterfield v. Rudde, 58 id. 489.)

The legislature may modify the rules of evidence. (Howard v. Moot, 64 N. Y. 262; People v. Turner, 117 id. 227.) But retroactive laws of this character must be strictly construed. People ex rel. v. Ryder, 124 id. 500.)

The legislature cannot deny to a person who has been ille-

gally deprived of his property access to the courts for relief (Gilman v. Tucker, 128 N. Y. 190, 202); but may deprive a party of the aid of a court of equity to remove the apparent lien of a void assessment upon his land. (Lennon v. Mayor, 55 N. Y. 361.)

The legislature may direct the enforcement of valid judgments by imprisonment, if property cannot be found. (People ex rel. Underwood v. Daniel, 50 N. Y. 274.)

The legislature cannot provide for the surrender of fugitives from justice of foreign countries (People ex rel. v. Curtis, 50 N. Y. 321); cannot validate a void contract. (N. Y. & Oswego R. R. Co. v. Van Horn, 57 N. Y. 473.)

The legislature cannot infringe upon the liberty or the property rights of persons within the protection of the constitution, under the guise of the police power. (People v. Gilson, 109 N. Y. 389.)

The legislature cannot contingently deprive a person of property the right to which was perfect under prior laws. (Burch v. Newbury, 10 ... Y. 374.)

The legislature may confirm an irregular election. (People v. Flanagan, 66 N. Y. 237.)

The legislature may regulate or limit the height of buildings. (People ex rel. v. D'Oench, 111 N. Y. 359.)

The legislature may authorize the sale of land of infants, in being or unborn (Leggett v. Hunter, 19 N. Y. 445); but not of adults without their consent, except for taxes or assessments. (Brevoort v. Grace, 53 N. Y. 245.)

The legislature may distribute the functions of supreme court commissioner, although the office has been abolished. (Hayner v. James, 17 N. Y. 316.)

The legislature may create a commission of investigation by joint resolution. (People v. Learned, 5 Hun, 626.)

The legislature cannot create a debt of the state beyond the amount authorized by the constitution. (People v. Supervisors of Kings, 52 N. Y. 556.)

The legislature may determine what estate shall be taken by the state in land acquired for public purposes, although the public use be not necessarily permanent. (Eldridge v. Binghamton, 120 N. Y. 309.)

The legislature cannot arbitrarily declare property a public nuisance for the purpose of devoting it to destruction. (Colon v. Lisk, 153 N. Y. 188.) (1897.)

The power to divide counties and towns, and erect new ones, is legislative in its character and is conferred upon the legis-

lature by the general grant of legislative powers. (People ex rel. Henderson v. Supervisors of Westchester, 147 N. Y. 1.) (1895.)

The legislature cannot annul the final judgment of a court convicting an accused person of a crime. (Roberts v. State, 30 App. Div. 106.) (1898.)

The legislature can apportion and cast assessments itself without notice to property-owners. (Matter of Curren, 25 Misc. Rep. 432; affd., 38 App. Div. 82.)

The legislature can revise and correct its enactments so as to accomplish in the final result the same justice which it may be presumed it would have provided for in the first instance, if it could have foreseen the actual results to follow upon its first enactments. Where an assessment for a public improvement has been imposed upon the owners of abutting property it may, after the assessment has been levied and paid, direct that the municipality refund to the owners assessed the amount so paid on such assessment. (People v. Molloy, 35 App. Div. 136.) (1898.)

The power of congress to regulate interstate commerce does not preclude the exercise of the police power of the state so far as it may prohibit the bringing into the state anything detrimental to the health of the state and does not render inoperative the state statutes on the subject. (Crossman v. Lurman, 57 App. Div. 393.) (1901.) (Affd., 171 N. Y. 329.) (1902.)

The legislature has power to curtail or abolish the right to appeal. (People v. Rutherford, 47 App. Div. 209.) (1900.)

The legislature may authorize the city to insert in contracts for city improvements a provision requiring the contractor to keep the streets in good repair for a period of ten years. It may authorize the expense of repaving a street to be defrayed by local assessment. (People v. City of Buffalo, 52 App. Div. 157.) (1900.)

The legislature has not the power to direct that a constitutionally elective office shall be filled at a date earlier than that of the election which next precedes the expiration of the term of the existing incumbent. (People v. Treacy, 46 App. Div. 216.) (1899.)

While the legislature might not delegate authority to a municipal body without qualification to determine as to the necessity of a railroad crossing it may authorize the supreme court to review the determination of the common council of the city in favor of extending a street over the existing railroad. (Matter of Delavan Avenue, 167 N. Y. 265.) (1901.)

The legislature has the power to require a street railway corporation to keep the railway strip in repair as directed by the local authorities and to impose all reasonable regulations as to the exercise of its corporate privileges. (Village of Mechanicville v. Stillwater & Mechanicville St. R. R. Co., 35 Misc. Rep. 513.) (1901.)

The legislature has the power to require an infant plaintiff to give security for costs. (Venanzio v. Weir, 64 App. Div. 483.) (1901.)

The legislature may legalize acts of the commissioners to construct a sewer in the city done under statute inadvertently scheduled as repealed and subsequently re-enacted. (McKee Land & Imp. Co. v. Williams, 63 App. Div. 553.) (1901.)

The legislature has no power over a nonresident to make him personally liable for a tax assessed against his personal property within this state. (City of New York v. McLean, 57 App. Div. 601.) (1901.)

The legislature may take away statutory powers of boards of supervisors as well as add to them. (County of Queens v. Petry, 54 App. Div. 115.) (1901.)

The legislature has the right to require as a condition of obtaining a conveyance under a city tax sale that the purchaser pay prior tax liens for which the property had previously been sold and bid in by the city. (People v. City of Buffalo, 63 App. Div. 563.) (1901.)

The constitution does not forbid retroactive legislation except where it affects rights which existed before its passage. (Matter of Pell, 60 App. Div. 286). (1901.)

There is not and never has been any constitutional limitation or restraint upon the power of taxation by the legislature. The power of taxing and the power of apportioning taxation are identical and inseparable. An act providing that property should be assessed at a certain sum per linear front foot for cost of constructing sewer is constitutional. (People ex rel. Scott v. Pitt, 64 App. Div. 316.) (1901.) (Affd., 169 N. Y. 521.)

Statutes requiring street railroad corporations to keep railroad strip in repair is within the power of the legislature, though applying to railroad companies already in operation. (Doyle v. City of New York, 58 App. Div. 588.) (1901.)

An act authorizing commissioners named therein to audit certain outstanding claims against the city of Syracuse for indebtedness incurred in excess of appropriations and in violation of charter restrictions but which the city was equitably obligated to

pay, held constitutional. (City of Syracuse v. Hubbard, 64 App. Div. 587.) (1901.)

The legislature has power to distribute the cost of a local improvement or some part of it upon property located upon the street where the improvement is made according to the frontage lands or upon the basis of a specified sum per linear foot, and the property-owner is not entitled to be heard at any time upon the justice or propriety of the principle upon which the assessment is to be apportioned. (People ex rel. Scott v. Pitt, 169 N. Y. 521.) (1902.)

Statutes purporting to legalize an assessment for local improvement and passed after the entry of the judgment declaring the assessment invalid are operative so far as they relate to those acts which the legislature might have dispensed with or ordered done before the proceedings were instituted. (Loomis v. City of Little Falls, 66 App. Div. 299.) (1901.) (Affd., 176 N. Y. 31.) (1903.)

The legislature has the right to establish, increase, abolish or reduce the salary attached to office of alderman during term of office. (Young v. City of Rochester, 73 App. Div. 81.) (1902.)

It is within the province of the legislature as against a corporation of its own creation to say what shall constitute a taking of private property for public purposes, and the legislature in creating a municipal corporation has the right to create a tribunal for assessing the damage which individuals may sustain by reason of the taking of their property for public purposes and the corporation cannot question the constitutionality of such a tribunal. (Matter of Comesky, 83 App. Div. 137.) (1903.)

The legislature has power to extend the limitations of an existing municipality by annexing thereto territory which will be made liable for the pre-existing debts of the municipality without regard to the benefit accruing to the territory annexed. (Hollister v. City of Rochester, 41 Misc. Rep. 559.)

Semble that the provisions of the labor law as to prevailing rate of wages so far as it relates to the direct employees of the state or of a municipality thereof is constitutional. (Ryan v. City of New York, 177 N. Y. 271.) (1903.)

Legislature cannot authorize municipality to enter into contract with officer so as to prevent subsequent legislation abolishing office. (People ex rel. Devery v. Coler, 173 N. Y. 103.) (1903.)

The legislature has power to permit for public purpose an examination of the records in the custody of the county clerk

without making compensation to him. (Wuest v. City of New York, 89 App. Div. 262.) (1903.)

The legislature may authorize a city to acquire by eminent domain an easement over lands owned and occupied by a railroad company and acquired by it by purchase. Semble. That even if lands of railroad company had been acquired by eminent domain the legislature could still authorize another to occupy them for a public use which did not interfere with the prior use. (Matter of City of Gloversvills, 42 Misc. Rep. 559.) (1904.)

The legislature has the absolute power to require a municipal corporation to apply the property held by it for such public use as the legislature shall direct. (Potter v. Collins, 19 App. Div. 392.)

The legislature has power to abridge the term of office or abolish an office created by an act of the legislature, citing Coch v. Mayor, 152 N. Y. 72. (Matter of Lowman, 95 Apo. Div. 32.) (1094.)

Police Power.

Laws passed in the exercise of the police power must tend toward the preservation of the lives, health, morals or welfare of the community, and there must be some clear and real connection between the assumed purpose of the law and the actual provisions thereof. (Colon v. Lisk, 153 N. Y. 188.) (1897.)

The state may, by police regulations, so direct the use and enjoyment of the property of the citizen, that it shall not prove pernicious to its neighbors or to the public generally, so long as the exaction is not unreasonable either with reference to its nature or its cost. (Health Dept. of N. Y. v. Rector, etc., of Trinity, 145 N. Y. 32.) (1895.)

It is not usually necessary to the validity of police legislation, that the citizen affected should be heard before he is bound to comply with the direction of the legislature. (Health Dept. of N. Y. v. Trinity, 145 N. Y. 32.) (1895.)

Act prohibiting sale of vinegar containing artificial coloring matter upheld as a valid exercise of police power. (People v. Girard, 145 N. Y. 105.) (1895).

The regulation of plumbing in cities upheld as an exercise of the police power. (People ex rel. Nechamcus v. Warden of City Prison, 144 N. Y. 529.) (1895.)

The liquor tax law is not a tax law having for its primary purpose the raising of money for the support of government,

but is a law enacted under the police power. (People ex rel. Einsfeld v. Murray, 149 N. Y. 367.) (1896.)

A city ordinance making it unlawful for any person not a resident of the city to sell farm products therein without a license is not a valid exercise of the police power. (City of Buffalo v. Reavey, 37 App. Div. 228.) (1899.)

Prohibition of the use of soft coal is within police power of the state. (Brooklyn v. Nassau El. R. R. Co., 44 App. Div. 462.) (1899.)

A statute providing that no person without a license shall conduct a maternity hospital is within the police power of the state. (People v. Hagen, 52 App. Div. 387.) (1900.)

The legislature has power to compel telegraph and telephone companies using the streets of a city to place their wires in an underground conduit and pay their share of the expense, in the exercise of general police powers of the state. (Matter of City of Geneva v. Geneva Telephone Co., 30 Misc. Rep. 236.) (1900.)

While the police power of state may be used not only to protect public health, but also to prevent a fraud upon the people, statutes passed for that purpose must either in their title or in the body thereof indicate the purpose sought to be accomplished. (People v. Biesecker, 58 App. Div. 391.) (1901.) (Affd., 169 N. Y. 53.) (1901.)

A provision that tenement-houses not completed, but for which excavations have been commenced, shall be subject only to provisions of tenement-house acts affecting existing tenement-houses is valid, but provision that in such cases the first tier of beams must have been set prior to a certain date is an unreasonable exercise of police power. (Signell v. Wallace, 35 Misc. Rep. 656.) (1901.)

Anti-scalpers' law unconstitutional. Is not a valid exercise of the police power of the state. (People v. Caldwell, 64 App. Div. 46.) (1901.)

Railroad grade crossing act under which a railroad company may take proceedings to have a grade crossing abolished is within the police powers of the state. (Matter of B. & A. R. R. Co., 64 App. Div. 257.) (1901.)

Provisions of labor law regulating hours of employment in bakeries, valid exercise of police power. (People v. Lochner, 73 App. Div. 120.) (1902.)

Police power in respect to articles of food stated: 1. That the legislature cannot forbid or wholly prevent the sale of a wholesome article of food. 2. That legislation intended and reasonably adapted to prevent an article being manufactured in imita-

tion or semblance of a well-known article in common use and thus imposing upon consumers or purchasers is valid. 3. That in the interest of public health the legislature may declare articles of food not complying with a specified standard unwholesome and forbid their sale. Law forbidding use of preservatives other than salt in butter held unconstitutional. (People v. Biesecker, 169 N. Y. 53.) (1902.)

Trading stamp law unconstitutional where stamps are exchangeable for articles which are fixed and certain and there is no element of chance involved in the exchange. (People v. Dycker, 72 App. Div. 308.) (1902.)

Statutes prohibiting trade in food on Sunday within police power. (People v. Hagen, 36 Misc. Rep. 349.) (1902.)

It is competent for the legislature under its general police power to impose a new duty for the protection or safety of the public or of persons occupying or in buildings, the violation of which, if it directly and without any intervening cause results in injury or damage, will give rise to a cause of action, and may delegate this authority to a municipal legislature. (Koch v. Fox, 71 App. Div. 288.) (1902.)

A statute providing that a person who manufactures explosive substances in a house occupied for dwelling purposes is guilty of a misdemeanor is within police power. (People v. Lichtmen, 65 App. Div. 76.) (1902.)

Grade crossings in cities and quasi-public nuisances and their abolition is within police power. (Lehigh Valley R. R. Co. v. Adams, 70 App. Div. 427.) (1902.)

Act requiring street railways to furnish free transportation to policemen and firemen not within police power. (Wilson v. United Traction Co., 72 App. Div. 233.) (1902.)

Tenement-house act as affecting a building for which permit had been issued but construction not commenced, held constitutional. (City of New York v. Herdje, 68 App. Div. 370.) (1902.)

The confiscation of gambling outfits is within the police power of the state. (People v. Adams, 176 N. Y. 351.) (1903.)

Section 384h, subd. 1, prohibiting any person or corporation contracting with the state or a municipal corporation from requiring more than eight hours' work for a day's labor is unconstitutional as not within the police power. (People v. Orange Road Construction Co., 175 N. Y. 84.) (1903.)

Statute requiring registration and certificate of competency of each master plumber, city of New York, held constitutional. (Schnaier v. Navarre Hotel Imp. Co., 82 App. Div. 25.) (1903.)

To justify the state in regulating a business or occupation in behalf of the public it must appear, first, that the interest of

the public is general as distinguished from those of a particular class requiring such interference. Second, that the means used are reasonably necessary for the accomplishment of the purpose and are not unduly oppressive upon individuals. (Grossman v. Caminez, 79 App. Div. 15.) (1903.)

The legislature may confer upon boards of health power to enact sanitary ordinances having the force of law in the districts over which their jurisdiction extends. An act authorizing the board of health to enact an ordinance prohibiting the sale of adulterated milk constitutional. (People v. Timmerman, 79 App. Div. 565.) (1903.)

The provisions of the transportation law prohibiting gas companies from collecting rental for gas meters furnished to customers held to be within police power of the state. (City of Buffalo v. Buffalo Gas Co., 81 App. Div. 505.) (1903.)

Provisions of sanitary code of New York city forbidding the discharge of smoke from any building, engine or locomotive, held to be a reasonable regulation and constitutional. (People v. Horton, 41 Misc. Rep. 309.) (1903.)

Ordinance prohibiting the keeping or killing of poultry within certain limits without a permit held a valid exercise of police power. (People v. Davis, 78 App. Div. 570.) (1903.)

The provisions of the labor law restricting hours of labor in bakeries is a valid exercise of the police power, relative to the public health. (People v. Lochner, 177 N. Y. 145.) (1903.)

An act requiring school sinks in tenement-houses to be replaced by individual water-closets is a reasonable and proper exercise of the police power. (Tenement-House Department v. Moeschen, 89 App. Div. 526.) (1904.)

The provisions of the agricultural law prohibiting the sale of oleomargarine is constitutional, so far as it prohibits the sale of oleomargarine which has been changed by the addition of coloring matter from its natural white color to the yellow color of butter, even though the seller declares the true character of the substance at the time of the sale. (People v. Meyer, 89 App. Div. 185.) (1903.)

That part of subdivision 16 of section 640 of the Penal Code making it a misdemeanor to publicly mutilate, etc., the flag of the United States or of the state of New York is a valid exercise of the police power. That part of said subdivision which prohibits the use of the picture or representation of said flags in connection with the advertisement of merchandise is unconstitutional as infringing upon the personal liberty of the citizen and interfering with his right to engage in lawful business occupations and pursuits, and is not a proper exercise of the

police power. (People ex rel. McPike v. Van Decarr, 91 App. Div. 20.) (1904.) (Affd., 178 N. Y. 425.) (1904.)

The legislature has the supreme control of streets and public highways and has the right to regulate and restrict their use.

An ordinance prohibiting a hackman from using the streets to solicit patronage without license held constitutional. (People ex rel. Van Norder v. Sewer Commissioners, 90 App. Div. 555.) (1904.)

Statute prohibiting possession of fish and game brought into the state from without the state held unconstitutional as not a valid exercise of the police power. (People v. A. Booth & Co., 42 Misc. Rep. 321.) (1904.)

Chapter 459, Laws of 1903, making it unlawful to employ a child under fourteen years of age in any business while the public schools are in session is a valid exercise of the police power. (City of New York v. Chelsea Jute Mills, 43 Misc. Rep. 266.) (1904.)

The legislature has the right under the police power to prescribe transfers as a regulation of the rate of fare of street railways. (Jopham v. Interurban St. Ry., 42 Misc. Rep. 503.) (1904.)

Number and terms of senators and assemblymen.— § 2. The Senate shall consist of fifty members, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their office for three years, and their successors shall be chosen for two years. The Assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

[New, superseding section 2 of article III of the amended constitution of 1846, which provided for a senate of 32 members, and an assembly of 128 members. The provision that the senate shall consist of 50 members, "except as hereinafter provided," refers to the provision in the last paragraph of section 4 of this article.]

*** Senate districts.**— § 3. The State shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive.

* For present apportionment of senate districts, see chapter 727, Laws of 1907.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, ninteenth and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth and thirtieth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-

sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street, and Jackson street, to the East river and thence around the southern end of Manhattan island, to the place of beginning, and also Governor's, Bedloe's and Ellis islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river, to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street, and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue, and the transverse road across Central park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street, and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighty-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street and the East river, to the place of beginning; and also Blackwell's island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line

beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the transverse road across Central park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers to the place of beginning; and also Randall's island and Ward's island.

All of the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth

street and the Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

The territory of Westchester county annexed to New York county remained a part of the twenty-second senate district, and of the second judicial district and department. (People ex rel. Henderson v. Supervisors of Westchester, 147 N. Y. 1.) (1895.)

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of

Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth fourteenth and sixteenth wards of the city of Buffalo as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

[New, superseding the apportionment made by laws 1892, chap. 397.]

Enumerations and reapportionments.—§ 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State,

during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall at all times, consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

The ratio for apportioning the senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the Senate shall always be

composed of fifty members, except that if any county having three or more senators at the time of any appointment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

[New, superseding section 4 of article III of the amended constitution of 1846.]

The legislature in determining the question of population is not confined to the last state census. (De Camp v. Eveland, 19 Barb. 81.)

This section grants to the legislature a discretion, which the court has no power to review unless it has been plainly and grossly abused. (People ex rel. Carter v. Rice, 135 N. Y. 473.)

The power of the legislature to direct an enumeration is not lost by the failure of the first legislature after the expiration of ten years to perform its duty. The duty devolves upon each succeeding legislature. (People v. Rumsey, 19 N. Y. 41; People ex rel. Carter v. Rice, 135 id. 473.)

Apportionment of assemblymen; creation of assembly districts.—§ 5. The members of the Assembly shall be chosen by single districts and shall be apportioned by the Legislature at the first regular session after the return of every enumeration among the several counties of the State, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of Assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until

the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the Legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the State, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

*Until after the next enumeration, members of the Assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegany county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county, two members; Chatauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members;

*For present apportionment of members of Assembly, see chapter 727, Laws of 1907.

Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member; Rockland county, one member; St. Lawrence county, two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga county, one member; Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member, and Yates county, one member.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the

common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the Legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the Secretary of State and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration; and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate

district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the state enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the Legislature.

An apportionment by the Legislature, or other body, shall be subject to review by the Supreme Court, at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

[New, superseding section 5 of article III of the amended constitution of 1846, and the assembly apportionment made by Laws of 1892, chapter 397.]

The legislature cannot alter an assembly district by changing

the bounds of a city or town. (Kinne v. City of Syracuse, 3 Keyes, 110.)

The division by the supervisors is presumptively proper, and the presumption is not rebutted by the fact that the districts are to some extent unequal in population. (Baird v. Supervisors, 138 N. Y. 95, 106.)

Under this section boards of supervisors are permitted to exercise a reasonable discretion in the creation of the assembly districts. (Smith v. Supervisors of St. Lawrence, 148 N. Y. 187.) (1896.)

Compensation of members.— § 6. Each member of the Legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the Court for the Trial of Impeachments, and such members of the Assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

[Section 6 of article III of the amended constitution of 1846, without change.]

(See Legislative Law, § 5, restricting members from receiving $1,200 before final adjournment. For salaries of officers and employes see Legislative Law, §§ 7-12.)

Civil appointments of members void.— § 7. No member of the Legislature shall receive any civil appointment within this State, or the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, or from any city government,

during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

[Section 7 of article III of the amended constitution of 1846, without change.]

An appointment of a member of assembly as clerk by a justice of a district court is not violative of this section. (Stewart v. Mayor, 15 App. Div. 548.) (1897.) A district court is not a city court. (Id.)

Persons disqualified from being members.—§ 8. No person shall be eligible to the Legislature, who at the time of his election, is, or within one hundred days previous thereto has been, a member of Congress, a civil or military officer under the United States, or an officer under any city government. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

[Section 8 of article III of the amended constitution of 1846, without change.]

A park commissioner of the city of Hornellsville is a city officer under this section and ineligible to election to the legislature. The whole subject thoroughly discussed. (People ex rel. Sherwood v. Bd. of Canvassers, 129 N. Y. 360, 365.)

Time of elections.— § 9. The elections of senators and members of assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

[Section 9 of article III of the amended constitution of 1846, without change.]

Powers of each house.— § 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary president to preside in case of the absence or impeachment of the Lieutenant-Governor, or when he shall refuse to act as president, or shall act as Governor.

[Section 10 of article III of the amended constitution of 1846, amended by providing that the temporary president shall preside in the case of impeachment of the lieutenant-governor or when he shall refuse to act.]

Infliction by law of disqualification to hold office as a punishment is not inconsistent with this section. (Barker v. People, 3 Cow. 686. See also People v. Supervisors, 8 N. Y. 317, 324; People ex rel. Hatzel v. Hall, 80 id. 117, 120.)

Journals; open sessions; adjournments.— § 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

[Section 11 of article III of the amended constitution of 1846, without change.]

Members not to be questioned for speeches.— § 12. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

[Section 12 of article III of the amended constitution of 1846, without change.]

Bill may originate in either house.— § 13. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

[Section 13 of article III of the amended constitution of 1846, without change.]

Enacting clause of bills.— § 14. The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

[Section 14 of article III of the amneded constitution of 1846, without change.]

(See Burnham v. Acton, 35 How. Pr. 50.)

Manner of passing bills.— § 15. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the Legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.

[Section 15 of article III of the amended constitution of 1846 amended. The section formerly read: "No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal."]

For law relating to certificates of presiding officers, see Legislative Law, § 40.

The presumption is that a law published under the authority of the government was correctly passed so far as relates to matters of form. (People v. Supervisors of Chenango, 8 N. Y. 317.)

It is not necessary under the constitution that the presiding officer should certify that an act was passed by a majority of all the members elected. This is presumed. (Id.)

It is sufficient where a bill has been passed by ayes and nays, aud subsequent amendments disagreed to by the other house, if such amendments are receded from without an aye and nay vote. (Id.)

The requirement that the question upon the final passage of a bill be taken immediately upon its last reading, and the ayes and nays be entered in the journal, is only directory. (People v. Supervisors of Orange, 27 Barb. 584.)

The certificate of the presiding officer of each house required by Laws 1847, chapter 253, is only presumptive evidence of the fact. If the certificate is omitted, the fact that three-fifths were present may be shown by other evidence. (People v. Supervisors of Chenango, 8 N. Y. 318.)

Private and local bills not to embrace more than one subject.— § 16. No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.

[Section 16 of article III of the amended constitution of 1846, without change.]

This section is limited to acts of the legislature and does not apply to a resolution of a board of supervisors. (Roberts v. Supervisors of Kings, 3 App. Div. 366.) (1896.)

The design of this section was that no portion of the state

or its people should be made the subject of legislative action without notice. (People v. Supervisors of Chautauqua, 43 N. Y. 10, 15; People v. Hills, 35 id. 449.)

The intention was to require sufficient notice of the subject of proposed legislation of a private or local character to be so expressed in the title as to put all persons concerned in proposed legislation upon their guard. (Johnston v. Spicer, 107 N. Y. 185; Astor v. Arcade R. R. Co., 113 id. 93.)

The inquiry must be based upon the title of the original act. (Wilcox v. Baker, *22* App. Div. 299.) (1897.)

It is not sufficient to state in the title of a local bill merely that it amends a chapter of a previous year (People v. Hills, 35 N. Y. 449); but it is not necessary that the most expressive title should be adopted, nor should the courts criticise too rigidly the details of a bill to find extraneous matter (People ex rel. Rochester v. Briggs, 50 N. Y. 558); "An act to amend the several acts in relation to the city of Rochester," was held sufficient. (Id.)

It is necessary that the title be such as to fairly suggest or give a clue to the subject, but when that is expressed, all matters fairly and reasonably connected with it, and all measures which will or may facilitate its accomplishment, are proper to be incorporated in the act. (Astor v. Arcade R. R. Co., 113 N. Y. 93, 110; Sweet v. City of Syracuse, 129 id. 316, 331; Van Brunt v. Town of Flatbush, 128 id. 50.)

Any means provided by an act for accomplishing the purpose as expressed in the title, not clearly incongruous and foreign, will not render it invalid. (People ex rel., etc. v. Briggs, 50 N. Y. 553; Kerrigan v. Force, 68 N. Y. 384.)

A statute, general in form, is not private or local, because every application must be local or private. (Matter of N. Y. El. R. R. Co., 70 N. Y. 327; Matter of Gilbert El. R. R. Co., id. 361.)

The legislature may make local exceptions in general laws. (Matter of N. Y. El. R. R. Co., 70 N. Y. 327.)

A statute, local in one sense, may in some cases be general. (Burnham v. Acton, 7 Rob. 95.)

No definite rule can be laid down as to what constitutes a local act, but each case must be determined upon its own circumstances. (People ex rel. v. Newburgh Plankroad Co., 86 N. Y. 1, 7.)

A general provision in a local act is valid, although not expressed in the title, and though the local provisions are void because not expressed in the title. (Ferguson v. Ross, 126 N. Y. 459; People v. Supervisors of Chautauqua, 43 id. 10; People

v. McCann, 16 id. 58; Williams v. People, 24 id. 405.) The local provisions are void, if by containing general law, the act embraces more than one subject though but one local or private subject. (People v. Supervisors of Chautauqua, 43 N. Y. 10, 23.)

An act embracing all the cities of the state, or all things of a certain class is general, although by some limitation of population or otherwise, only a particular city or the inhabitants of a single locality receive its benefit. (Ferguson v. Ross, 126 N. Y. 459, 464; People ex rel. v. Squire, 107 id. 593; Matter of Church, 92 id. 4; Matter of Elevated R. R., 70 id. 327; Treanor v. Eichhorn, 74 Hun, 58; Burnham v. Acton, 7 Rob. 95.)

An act is local which in its subjects relates but to a portion of the people of the state, or to their property, and may not either in its subject, operation or immediate and necessary results, affect the people of the state or their property in general. (People v. Supervisors, 43 N. Y. 21; Kerrigan v. Force, 68 id. 383.)

Although an act is drawn in general terms, if its provisions are such in number and character, as unduly, with reference to the constitutional purpose, to restrict its operation and, to all intents, to confine it to a particular locality, it comes as much under condemnation as though it designated the locality by name. (Matter of Henneberger, 155 N. Y. 420.) (1898.)

An act may be public and still local. Thus the following acts though public are local and require the subject to be expressed in the title: Defining jurisdiction of local courts, amending municipal charters, regulating elections of city officers in a particular city, providing for laying out streets or highways or constructing bridges in a particular locality, taxing to pay expenses of the work, regulating fees of officers in a particular county or the expenses of judicial sales therein. (Ferguson v. Ross, 126 N. Y. 459, 464, and cases cited.)

The following have been held to be local acts:

An act creating a water department in and for the city of Syracuse. (Sweet v. City of Syracuse, 129 N. Y. 316.)

Act exempting counties from the provisions of the plank-road company act. (People v. Newburgh Plankroad Co., 86 N. Y. 1.)

An act providing for the taxation of the Troy Union Railroad Company. (People ex rel. Troy Co. v. Carter, 52 Hun, 458; affd., 117 N. Y. 625.)

An act relating to powers of broad of supervisors of Queens county. (People v. Brinkerhoff, 68 N. Y. 259.)

An act authorizing the city of Rochester to elect directors of Genesee Valley railroad. (People v. Hills, 35 N. Y. 449.)

An act relating to fees of sheriff in county of New York. (Gaskin v. Meek, 42 N. Y. 186.)

An act to affirm, reduce and levy certain assessments of the city of Brooklyn. (Matter of Van Antwerp, 56 N. Y. 261.)

An act in relation to the laying out and paving of certain streets in the city of New York. (Matter of Lexington Avenue, 29 Hun, 303; Matter of Woolsey, 95 N. Y. 135.)

See also other cases cited under this section and section 18 of this article.

The following have been held to be general bills:

An act appropriating money for bridging Seneca river to facilitate passage of canal-boats. (Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.)

A law having for its object the protection of navigation in New York harbor. (Ferguson v. Ross, 126 N. Y. 459.)

An act providing for a board of electrical subway commissioners in cities having a population of over 500,000. (People v. Squires, 107 N. Y. 593.)

An act conferring additional powers on board of supervisors. (Philips v. Schumacher, 10 Hun, 405.)

An act to provide for the construction of highways and bridges upon highways running through two or more towns. (Treanor v. Eichhorn, 74 Hun, 58.)

Workingmen's union label act. (Perkins v. Heert, 158 N. Y. 306.)

An act providing for special jury in counties containing certain population. (People v. Dunn, 157 N. Y. 528.)

An act appointing transfer tax appraisers in certain counties of the state. (Matter of Wallace, 71 App. Div. 284.)

An act appointing a commissioner of jurors in each county of the state having a certain population. (Matter of Allison, 172 N. Y. 421.)

Employers' liability act. (Gmaehle v. Rosenberg, 83 App. Div. 339.)

The application of this section has been passed upon in the following cases:

"An act to establish a local court of civil jurisdiction in the city of Syracuse, to be called the municipal court of the city of Syracuse," held sufficient. The abolition of office of justice of the peace and of the justice's court was so con-

nected with and pertinent to the whole scheme as not to constitute another and different subject. (Curtin v. Barton, 139 N. Y. 505.)

"An act in relation to local improvements in the town of Flatbush and the acquisition of the rights of the plankroad company in said town," properly embraces the building and improvement of highways and construction of sewers, including a trunk sewer in an adjoining town which is a necessary part of the system. (Van Brunt v. Flatbush, 128 N. Y. 50.)

"An act to legalize the acts and proceedings of the town board of the town of Attica, in relation to the erection of a certain iron bridge in said town," is sufficient to include provision permitting the contractor to recover for value of material and labor expended in construction of bridge. (Wrought Iron Bridge Co. v. Attica, 119 N. Y. 204.)

"An act to provide for the transmission of letters, packages and merchandise in New York and Brooklyn by means of pneumatic tubes," will permit provision for creation of corporation for purpose of constructing, maintaining, using and operating the pneumatic tubes. (Astor v. Arcade R. R. Co., 113 N. Y. 93.)

But a title providing for the transportation of passengers and property through pneumatic tubes will not permit of a provision authorizing the operation of an underground railway. (Id.)

"An act to establish and maintain a water department in and for the city of Syracuse" is sufficient to permit the incorporation of every provision necessary for the organization of such a department as an official body and also provisions conferring power upon that body to supply the city and the inhabitants with water. (Sweet v. Syracuse, 129 N. Y. 331.)

A title providing for the legalizing of the acts of the captain of the port and harbor-masters, and conferring jurisdiction on the board of claims to hear and determine their claims and declaring from what date their offices should be deemed vacant, includes subjects sufficiently connected to authorize their being embraced in one act, as they all relate to the same subject-matter and are not violative of this section. (Cole v. State, 102 N. Y. 48.)

An act entitled "An act for the relief of the village of Clinton" does not embrace more than one subject, because containing provisions legalizing acts of water commissioners, also legalizing special election and curing errors and omissions in previous legislation, all of which is sufficiently expressed in title. (Water Commissioners v. Dwight, 101 N. Y. 9-11.)

"An act in reference to the collection of taxes in the counties of Chautauqua and Cattaraugus" will permit of provisions making deeds of county officers presumptive and conclusive evidence of regularity. (Ensign v. Barse, 107 N. Y. 329.)

"An act granting to the United States the right to acquire the right of way necessary for the improvement of the Harlem river and Spuyten Duyvil creek, and ceding jurisdiction over the same," sufficiently expresses the subject of acquisition of lands by purchase or compulsory proceedings, the manner of payment and the mode of acquiring means therefor. (Matter of United States, 96 N. Y. 227.)

"An act in relation to the county treasurers of the counties of Monroe and Seneca," permits of provisions authorizing supervisors to designate banks of deposit, requiring such banks to give bonds, pay interest and keep accounts with state treasurer. (Supervisors of Seneca v. Allen, 99 N. Y. 532.)

"An act to revise the charter of Long Island City," expresses but one subject. An act creating a municipality and giving to it the necessary legislative, taxing, judicial and police powers, embraces but one subject and the revision of an act which incorporated a municipality is by parity of reasoning but one subject and certainly so if in the revision no different general powers are given. (Harris v. People, 59 N. Y. 599.)

"An act to secure better administration in the police courts of the city of New York," will permit of the incorporation of every provision of law which legislative wisdom may regard as conducive to the securing of better administration in these courts. (Wenzler v. People, 58 N. Y. 516.)

"An act relative to contracts, etc., of the city of New York" will permit of a provision devolving the power and authority theretofore vested in the common council relative to assessment lists and the confirmation thereof upon other city officers as it relates to the manner of raising money by assessment to pay for the execution of contracts. (Matter of Volkening, 52 N. Y. 650.)

"An act in relation to that portion of the Great Western Turnpike road known as Western avenue," etc., will permit of provisions relating to conveyances by the turnpike company, acceptance of the same by the grantees and all improvements, ornamentation and repair of the highway mentioned. The subject-matter of the act was the turnpike road. The title need not disclose the character of the proposed legislation, its full object and purpose or make known the several interests which may be affected by it. The legislature is not subject to

judicial control in respect to the form or mode in which the subject of the bill shall be expressed provided it is expressed (People v. Banks, 67 N. Y. 568.)

"An act to reorganize the village of Gloversville" will permit of provisions relating to granting licenses and suing for penalties, as they relate to the subject of police regulations which are embraced in the organization of the village. (Gloversville v. Howell, 70 N. Y. 287.)

"An act to amend the several acts in relation to the city of Rochester." The subject-matter is the corporate powers of the city and their regulation. The title expresses the subject comprehensively enough to embrace all the details of a city charter. Inasmuch as the subject comprehends all of the functions of the corporation, provisions in relation to any of them or necessary or pertinent to accomplish and carry out any of them may be incorporated in the bill. (People v. Briggs, 50 N. Y. 553.)

"An act to enable the board of supervisors of the county of New York to raise money by taxes and in relation to the expenditure thereof, and to provide for auditing and payment of claims and in relation to actions against said city," will not permit of a provision in relation to the term of office and time of electing councilmen of said corporation. (People v. O'Brien, 38 N. Y. 193.)

An act entitled "An act to amend chapter 389 of the Laws of 1851," which authorizes the election of seven directors of the Rochester and Genesee Valley Railroad Company, instead of four, held unconstitutional as not expressing the subject of amendment in the title. (People v. Hills, 35 N. Y. 449.)

An act entitled "An act in relation to the fees of the sheriff of the city and county of New York and to the fees of referees in sales in partition cases," and which contains provisions relating to fees of sheriff, fees of referees and commitments of police justices and giving sheriff exclusive right to sell real estate, held to express more than one subject in title and to contain subjects not expressed in title. (Gaskin v. Meek, 42 N. Y. 186.)

An act entitled "An act to release the interest of the people of the state of New York in certain real estate to Catherine McCabe," the object of which was to convey to some one of the heirs of George Spicer the rights of property acquired by the state through escheat or forfeiture in the real and personal property of Ellen Spicer, held unconstitutional, that this is a private act and no reference is

made in the title to the former ownership of either George or Ellen Spicer or to the fact that the state acquired its interest by escheat or reversion, nor that the act was intended to transfer any interest in personal property, and no reference to the place or location of the property affected. (McCabe v. Kenny, 52 Hun, 514.)

An act entitled "An act to amend and consolidate the charter of the village of Waterloo," contains a sufficient expression in the title of the subject of the act which was the boundary of the village, wards and highways and election and appointment of officers. (Reed v. Schmit, 39 Hun, 223.)

An act entitled "An act to provide for the election of the surrogate separate from the county judge of the county of Steuben and to fix the salary of such surrogate and of county judge," which contains provisions relating to election, to term of office, to duties of surrogate and salary of county judge and surrogate contains but one subject which is sufficiently expressed in title. (McIntyre v. Allen, 43 Hun, 124.)

An act entitled "An act to enforce the collection of taxes levied in the county of Lewis," imposing penalty for the cutting of timber upon lands upon which taxes remain unpaid, sufficiently expresses subject in title. (Prentice v. Weston, 47 Hun, 121; affd., 111 N. Y. 460.)

An act to require the Eighth Avenue Railroad Company to extend its route and to regulate the use and operation of its railroad contains but one subject which is expressed in title. (Potter v. Collis, 19 App. Div. 392.) (1897.),

An act in relation to the office of district attorney of the county of Kings, which repeals an act creating the office of county detective and attaches that office to the district attorney's office, contains but one subject which is expressed in title. (People v. Backus, 11 App. Div. 147.) (1896.)

An act amending the county law relating to authorizing towns to borrow money and containing a special provision affecting Queens county contains but one subject which is expressed in the title. (Dunton v. Hume, 15 App. Div. 122.) (1897.)

An act entitled "An act to authorize the dredging of marsh lands," which created a corporation and authorized it to reclaim lands, to levy and collect assessments and to exercise the power of eminent domain does not express the subject in the title. (Coxe v. State, 144 N. Y. 336.) (1895.),

An act providing for ascertaining and paying the amount of damages suffered by means of change of grade of streets

in certain wards in the city of New York or otherwise, held to express but one subject in title. (People ex rel. Purdy v. Fitch, 147 N. Y. 355.) (1895.)

An act entitled "An act in relation to the office of sheriff of the city and county of New York," fairly embraces within its subject and title all matters legitimately and naturally connected with the administration of that office in its entirety and the powers, duties and emoluments of its administrators. (Mayor v. Gorman, 26 App. Div. 191.) (1898.)

An act providing for special juries in criminal cases in counties of 500,000 inhabitants is a general and not a local law, although by reason of the limitation based on population only a limited number of counties may receive its benefit. (People v. Dunn, 157 N. Y. 528.)

"An act establishing a board of improvement and defining its powers and duties and to provide for lighting the streets and other places in the town of New Utrecht" will not permit of a provision ratifying and confirming illegal contracts made for the purpose of lighting said town as this is a separate and distinct subject not included in the title. The establishing of the board of improvement for the town and defining its powers and duties has reference to the lighting of the streets and is one subject; that of ratifying and confirming illegal contracts is another subject and both cannot be included in the same act. (Parfitt v. Furguson, 159 N. Y. 111.) (1899.)

"An act to amend chapter 361 of the Laws of 1863, entitled an act to authorize the construction of a railway and tracks in the towns of West Farms and Morrisania, and the acts amendatory thereof," purports to effect a single object, namely, the amendment of a particular statute and necessarily calls attention to the fact that the purpose is to add to not deduct from the authority granted by it. Because it authorizes something not permitted by the original act it does not necessarily add to the number of subjects embraced in the legislation. Anything germane to the general subject of building and operating a railroad might have been included in the original act and that which might have been included in the original act may be incorporated into it subsequently by amendment without a change of title. (Bohmer v. Haffen, 161 N. Y. 390.) (1900.)

A private and local statute entitled an act to authorize a railroad company to extend its road is not open to the objection that it contains more than one subject because of a provision fixing the maximum rate of fare which it may charge. (Parker v. E. C. & N. R. R. Co., 165 N. Y. 274.) (1901.)

An act entitled "An act for the better administration of justice in the town of Sweden in the county of Monroe," containing a provision abolishing the office of police justice of the village of Brockport and establishing the office of police justice in the town of Sweden does not contain two subjects. (People v. Lane, 53 App. Div. 531.) (1900.)

"An act in relation to the village of Brockport" sufficient to describe a statute of several sections all relating to said village. (People ex rel. Village of Brockport v. Sutphin, 53 App. Div. 613.) (1900.) (Affd., 166 N. Y. 163.)

The title "An act in relation to Clinton Ave.," etc., sufficiently expresses the subject of the bill to widen the avenue by adding ornamental court yards on each side of it and regulate their use. The purpose contemplated is a public purpose. (Matter of City of New York, 57 App. Div. 166.) (Affd., 167 N. Y. 624.)

"An act to reorganize the police department of the city of New York," abolishing terms of office of police commissioners, providing for single commissioner and defining his powers and duties, abolishing office of chief of police and bureau of elections contains but one subject and that expressed in title. (People ex rel. Devery v. Coler, 71 App. Div. 584.) (Affd., 173 N. Y. 103.) (1903.)

Article 10 of tax law providing for appointment by comptroller of transfer tax appraisers in certain counties is not a local act. (Matter of Wallace, 71 App. Div. 284.) (1902.)

An act amending "An act to revise the charter of the city of Auburn," to change the time for holding charter election and to provide for the tenure of office of the officers of said city, embraces but one subject in the title which was the amendment of the charter of the city of Auburn, what followed was merely explanatory and was not contradictory or misleading. (People ex rel. Stupp v. Kemp, 83 App. Div. 554.) (1903.)

An act entitled "An act for the relief of the heirs-at-law of William C. Herring, deceased," having for its purpose the release of title to lands devised to Honora V. Herring which had escheated to the state upon her death being a private and local bill and not containing in the title the name of the person whose decease affected the forfeiture nor the location of property was clearly misleading, did not express the subject of the act and was held unconstitutional. (Kelly v. Pratt, 41 Misc. Rep. 31.) (1903.)

An act entitled "An act to amend 'An act in relation to

the management of the Albany penitentiary,' relative to the salary of the keeper of said penitentiary," which contained provisions authorizing commissioners to fix the salary of the superintendent; to dispense with his services; place the penitentiary in the custody of the sheriff; that the sheriff should serve without extra compensation; defining the sheriff's duties relative thereto; authorizing the discontinuance of the penitentiary or sale of the same, embraces several subjects only one of which is expressed in the title and is unconstitutional. (People ex rel. Corscadden v. Howe, 177 N. Y. 499.) (1903.)

An act entitled "An act to amend the charter of the city of Rochester, relative to expenses incident to improvements," and which contains provisions legalizing every general tax or local assessment on property in that city is unconstitutional as that subject is not expressed in the title. (Matter of City of Rochester v. Bloss, 77 App. Div. 28.) (1902.)

An act entitled "An act conferring additional powers upon town board of town of Jamaica, relative to public lands," which ratifies and confirms certain leases held unconstitutional as it does not sufficiently express that subject in title. (Wenk v. City of New York, 82 App. Div. 584.) (1903.)

Existing law made applicable to be inserted.—§ 17. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.

[Section 17 of article III of the amended constitution of 1846, without change.]

This section does not require the re-enactment of general laws whenever it is necessary to resort to them to carry into effect a special statute. (People ex rel. Comrs. v. Banks, 67 N. Y. 568, 575.)

Where a statute in itself grants some power, confers some right, imposes some duty, or creates some burden or obligation, it does not conflict with this section, because it refers to some other existing statute, general or local, for the purpose of pointing out the procedure, or some administrative detail, necessary for the execution of the power, the enforcement of the right, the proper performance of the duty, or the discharge of the burden or obligation. (People ex rel. Everson v. Lorillard, 135 N. Y. 285, 291; Mallory v. Reichert, 32 Hun, 86.)

Reference for procedure or administrative details is not within the prohibition of this section. (Choate v. City of Buffalo, 39 App. Div. 379 (1899); Matter of Buffalo Traction Co., 25 id. 447.) (1898.)

Does not apply to an act purporting to amend existing laws. (People ex rel. Elec., etc., Co. v. Squires, 107 N. Y. 602.)

Prior to this section, a repealed act might have been incorporated in an existing law by reference. (Blauvelt v. Nyack, 9 Hun, 153. See also Curtin v. Barton, 139 N. Y. 505, 514; Matter of Application of Union Ferry Co., 98 id. 158; People ex rel. Stevens v. Hayt, 7 Hun, 39; Wells v. City of Buffalo, 14 id. 438; Matter of Mayor, etc., of New York, 34 id. 441; Nash v. White's Bank of Buffalo, 37 id. 57; S. C., 105 N. Y. 243; Weinckie v. N. Y. C. & H. R. R. R. Co., 61 Hun, 619.)

For recent decisions considering this section, see People ex rel. Golden v. Roosevelt, 24 App. Div. 17 (1897); People ex rel. Weaver v. Van De Car, 150 N. Y. 439 (1896); Swikehard v. Michaels, 81 Hun, 325 (1894); Winfield v. Bruning, 89 Hun, 124. (1895.)

The statute declaring the sanitary code to be binding and in force in the city of New York held constitutional since the sanitary code was not an existing law of the state within the meaning of this section and was not declared applicable to or made a part of such act. (People v. Davis, 78 App. Div. 570.) (1903.)

[As to what are private and local bills, See § 16, ante, and cases cited.]

Cases in which private and local bills shall not be passed; restrictions as to laws authorizing street railroads.—§ 18. The Legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Has no application to corporations. (Moran v. Lydecker, 27 Hun, 585.)

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other lands.

The legislature may, nevertheless, confer the power it before possessed upon boards of supervisors. (People ex rel. Morrill v. Supervisors of Queens, 112 N. Y. 585; People ex rel. Comrs. v. Banks, 67 id. 568.) Not applicable to act laying out city

street (Matter of Lexington Ave., 29 Hun, 303; Matter of Woolsey, 95 N. Y. 135, revg. 29 Hun, 629); nor to provision in village charter authorizing board of trustees to widen a street (People v. Lohnas, 54 Hun, 604. See also Matter of Church, 92 N. Y. 1; Trçanor v. Eichhorn, 74 Hun, 58; Weinckie v. N. Y. Cent. & H. R. R. R., 61 id. 619; Swikehard v. Michaels [Sp. T., Sup. Ct.], 8 Misc. Rep. 568.)

The term "highways," as used in the constitution, does not include streams of water or water highways. (De Camp v. Dix, 159 N. Y. 436 (1899); Matter of Burns, 155 N. Y. 23.) (1898.)

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands.

See People ex rel. Morrill v. Supervisors, 112 N. Y. 585.

Not applicable to city streets or avenues. Matter of Woolsey, 95 N. Y. 135.

Act authorizing drainage of lands, and giving corporation a right therein, is invalid. Coxe v. State, 144 N. Y. 396. See, also, Matter of Heimsberger, 155 id. 421.

Act declaring certain streets to be public highways is invalid. De Camp v. Dix, 159 N. Y. 436.

Locating or changing county seats.

Under this prohibition, the legislature cannot validate a resolution of a board of supervisors changing the county seat which depended for its passage upon the vote of one who acted as a member without color of authority, as such ratification would be in fact the enactment of a change by the legislature. (Williams v. Boynton, 147 N. Y. 426.) (1895.)

Providing for changes of venue in civil or criminal cases.

The removal of an action from the justice's court of the city of Yonkers to the city court of that city is a change of form, not of venue and is not prohibited by this action. (Doran v. Bussard, 38 App. Div. 30.) (1899.)

Provision in charter of cities of second class requiring actions against city, etc., to be brought in county in which city is situated, relates only to transitory actions and does not affect provisions of code as to place of trial of actions affecting real property. It does not violate provisions of this section prohibiting passage of private or local bill providing for change

of venue in civil or criminal actions. (Czarnowsky v. City of Rochester, 55 App. Div. 388.)

Provision in domestic commerce law that if the venue of an act to recover penalty is laid in county where the owner, dealer or shipper resides it shall not be changed for any cause is unconstitutional. (Warner v. Palmer, 66 App. Div. 127.) (1902.)

Incorporating villages.

"An act to amend and consolidate the charter of the village of Waterloo" not in violation of this provision. (Reed v. Schmit, 39 Hun, 223.)

Providing for election of members of boards of supervisors.

An act providing for the length of term of supervisors in but four counties is unconstitutional. (People ex rel. Hassell v. Hoffman [Sp. T.], 60 How. Pr. 324.)

This provision applies to town, not to city supervisors. A provision of a city charter allowing the supervisors of each ward to be "elected by the electors of each ward" is valid. (People ex rel. Clancy v. Supervisors, 139 N. Y. 524.)

Selecting, drawing, summoning or impaneling grand or petit jurors.

(See People v. Petrea, 92 N. Y. 128.)

An act confined in operation to each county containing a population of 500,000 or more, not violative of this subdivision. (People v. Dunn, 157 N. Y. 528.) (1898.)

An act providing for selection of special jurors in counties of certain population, not violative of this section distinguishing Henneberger Case, 155 N. Y. 420. There are good reasons why in a general law reference should be made to conditions of population. (People v. Dunn, 157 N. Y. 528.) (1899.)

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed.

An act increasing fees of sheriff of Kings county, which did not in terms apply to the sheriff in office, held constitutional. (Kerrigan v. Force, 68 N. Y. 381.) Does not apply to officers having fixed salaries (Mangam v. Brooklyn, 98 id.

585); nor to an act relating to the compensation of certain county treasurers, which does not in terms apply to county treasurers in office at the time of its passage. (Supervisors of Seneca v. Allen, 90 id. 532. See also Cole v. State, 102 id. 48; People ex rel. Lynch v. Duffy, 49 Hun, 276; Ricketts v. Mayor, 67 How. Pr. 320.)

There are no public officers in the state whose compensation may not be increased or diminished by the legislature during their terms of office, except the state officers named in the constitution, judges of the court of appeals, justices of the supreme court and county judges and surrogates. All other public officers are subject to the power of the legislature to increase or diminish their compensation at any time provided it be done by general law. The inhibition is against such legislation by local or private bills only and not to enactments accomplishing those subjects by general law. (Mangam v. City of Brooklyn, 98 N. Y. 585.)

Granting to any corporation, association or individual the right to lay down railroad tracks.

An act amending an act authorizing corporations created for the transmission of letters, etc., in the cities of New York and Brooklyn, by adding the words "and to provide for the transportation of passengers in said tubes," held unconstitutional. (Astor v. Arcade R. R. Co., 113 N. Y. 93.) An act authorizing the construction of an "illustrative section" of elevated railroad, held void. (People ex rel. Harvey v. Loew, 102 id. 471.) An act extending the expired time of a railroad is invalid. (Matter of Brooklyn, etc., R. R. Co., 75 id. 335.) Authority to change motive power, although it necessitates a change of rails, is not invalid. (People v. L. I. R. R. Co. [Sp. T.], 9 Abb. N. C. 181; Matter of N. Y. El. R. R., 70 N. Y. 327, where the subject is thoroughly discussed.) The regulation of an existing right is not within this prohibition. (Gilbert El. R. R. Co. v. Anderson, 3 Abb. N. C. 434. See also Farnham v. Benedict, 107 N. Y. 159; Matter of N. Y. & L. I. Bridge Co., 54 Hun, 400.) Has no reference or application to a municipality. (Sun Printing, etc., Co. v. Mayor, 152 N. Y. 257.) (1897.)

The consolidation of two railroad corporations by special act is not unconstitutional. (Bohmer v. Haffen, 22 Misc. Rep. 565.) (1898.)

A provision in a charter of a bridge company authorizing it to provide for the transportation of vehicles of every de-

scription, does not include the right to lay railroad tracks and such an act is not rendered unconstitutional thereby. (Matter of N. Y. & Long Island Bridge Co., 148 N. Y. 540.) (1896.)

An act which secures to a railroad company the franchises of another railroad company purchased by it is unconstitutional in so far as it authorizes the laying down of tracks in addition to those authorized by the franchises so purchased. (Atchincloss v. Met. El. R. R. Co., 69 App. Div. 63.) (1902.)

An act provided for the consolidation of the corporate stock and property of railroads within certain territory and the effect of such consolidation was to enable the new corporation to succeed to all of the rights and privileges of the consolidated companies including such rights as they had under the railroad law. There is a distinction between the grant of a right and the regulation of rights previously granted. A private or local bill may regulate the powers, rights, privileges and franchises previously possessed, including the regulation and control of the right to lay down tracks previously existing. (Bohmer v. Haffin, 161 N. Y. 390.) (1900.)

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Designed to prohibit original and independent grants. An act restricting and regulating an existing right is not within this prohibition. (Matter of Gilbert El. R. R., 70 N. Y. 361. See Matter of Application of Union Ferry Co., 98 id. 139; Syracuse Water Co. v. Syracuse, 116 id. 167, 186; Trustees of Firemen's Fund v. Roome, 93 id. 314; Moran v. L. I. City, 101 id. 439.)

"An act for the better protection of skilled labor and for the registration of labels, etc.," is not a private or local bill but is in every sense a general law. The legislature is authorized to grant an exclusive privilege or franchise under a general law and such grant is not against public policy but is in accord with the policy of the state. (Perkins v. Heert, 158 N. Y. 306.) (1899.)

Law authorizing incorporation of but one society in county and permitting such society to appropriate, harbor or keep dogs without paying license fee while every citizen is obliged to pay such license fee, grants an exclusive privilege and immunity forbidden by the constitution. (Fox v. Mohawk & H. R. Humane Soc., 165 N. Y. 517.) (1901.)

An act exempting a railroad company from the expense of paving the railroad strip does not grant an exclusive immunity. The true test as to whether a franchise, privilege or immunity is an exclusive one is not whether all others are excluded from the enjoyment of that particular grant, but whether all others are to be excluded from the enjoyment of a like grant. It is not whether others enjoy a similar privilege, immunity or franchise but are others prohibited from the similar enjoyment by reason of the enactment. (Weed v. Common Council, 26 Misc. Rep. 208.) (1899.)

An act authorizing the consolidation of railroad corporations does grant an exceptional privilege but does not grant an exclusive privilege, immunity or franchise within the meaning of the constitution. (Bohmer v. Haffin, 161 N. Y. 390.) (1900.)

A franchise granted by the village to a water company to supply the village with water is not exclusive and the village may grant a franchise to another corporation to carry on the same business in the same territory, and under the authority acquired from the legislature the municipality has the power to determine that the rights so reserved shall be exercised by the municipality itself. (Skaneateles W. W. Co. v. Skaneateles, 161 N. Y. 154.) (1900.)

An act prohibiting the use of soft coal for fuel in the furnaces of certain factories except for the purpose of welding iron or steel does not grant an exclusive privilege. (Brooklyn v. Nassau El. R. R. Co., 44 App. Div. 462.) (1899.)

Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property.

[Amended by vote of the people, Nov. 5, 1901.]

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

It may nevertheless confer the power of local legislation in regard to building bridges upon board of supervisors. (Town of Kirkwood v. Newbury, 122 N. Y. 571. See People ex rel.

Keene v. Board of Supervisors of Queens, 142 id. 271; Wrought Iron Bridge Co. v. Attica, 119 id. 204.)

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the Appellate Division of the Supreme Court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

[Section 18 of article III of the amended constitution of 1846 amended by changing the words "general term of the supreme court, in the district" in the last paragraph to "appellate division of the supreme court, in the department."]

The provisions of the last paragraph of section 18 in reference to consent do not apply to the streets of New York city, the title to those streets being in the city. (In re Gilbert El. R. R. Co., 70 N. Y. 631.)

This paragraph does not prevent the imposing of further conditions not inconsistent herewith. (Matter of Thirty-fourth St. R. R. Co., 102 N. Y. 343.)

Refers to a part of a road as well as to a complete railroad. (Matter of Metropolitan Transit Co., 111 N. Y. 588.)

The powers and franchises of street railroad corporations

existing prior to January 1, 1875, may be regulated without violating this provision. (Matter of Petition of Third A. R. R. Co., 121 N. Y. 536.)

The legislative power to authorize the construction of a street railway is subject to the limitation that the franchise is granted for public purposes. (Fanning v. Osborne, 102 N. Y. 441.)

Section 78 of the railroad law authorizing lease of railroad, being a revision of Laws 1839, chapter 218, held constitutional. The lessee road is not required to obtain consents of abutting owners. (Ingersoll v. Nassau Elec. R. R. Co., 157 N. Y. 453.) (1898.)

The provision of a railroad law authorizing railroad corporations to contract with each other for the use of their roads has not been affected by the amendments to this section and the exercise of that right is not dependent upon the obtaining by the assignee company of the consents or abutting owners to such use of the street by it. (Ingersoll v. Nassau Electric R. R. Co., 157 N. Y. 453.) (1899.)

Although the consent of local authorities to the construction of a street railroad is required, nevertheless, the power to grant franchise including the control of the streets is in the state, and the legislature may restrict the authority of the municipality to dispose of the same. Where such restriction included the payment of percentages upon receipts such payment must be made. (Heerwagen v. Crosstown St. Ry. Co., 90 App. Div. 275.) (1904.)

An act authorizing the consolidation of railroad corporations does not violate this section inasmuch as the consolidated company is subject to the burdens, obligations and liabilities imposed by law upon the corporations consolidated. The legislative grant of the right to consolidate is not forbidden by the constitution. (Bohmer v. Haffin, 161 N. Y. 390.) (1900.)

Private claims not to be audited by Legislature.—§ 19. The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

[Section 19 of article III of the amended constitution of 1846, without change.]

(For laws creating and regulating the court of claims, see L. 1883, chap. 205; L. 1884, chap. 334; L. 1884, chap. 85; L. 1884, chap. 329; L. 1884, chap. 336; L. 1885, chap. 135; L. 1885, chap. 355; L. 1887. chap. 36, and amendatory acts [R. S., 8th ed., pp. 538–46.]).

This section prohibits the legislature from auditing claims, but recognizes its power to authorize appropriate tribunals to do so. (Cole v. State, 102 N. Y. 48, 52.)

In this respect its power is not confined to strictly legal claims. (Id.)

Section cited in Swift v. State, 89 N. Y. 66.

Two-thirds bills.— § 20. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

[Section 9 of article I of the amended constitution of 1846, without change.]

(For law requiring certificate of presiding officers, see Legislative L., § 40.)

Where the appropriation is for state purposes, though the expenditure is confined to a locality, it does not require a two-thirds vote. Money may be appropriated to pay individuals for property purchased for the state or for salaries or wages without a two-thirds vote. (Sweet v. Syracuse, 129 N. Y. 316, 347.)

The courts may inquire whether an appropriation is public, and if private or local, whether it received the assent of two-thirds of the members of each house. (W. W. M. Co. v. Shanahan, 128 N. Y. 345, 358.)

The law must show on its face the requisite vote. (People ex rel. Purdy v. Commissioners, 54 N. Y. 276.) Resort may be had to the original law to determine whether it received the requisite two-thirds vote. (Rumsey v. N. Y. & N. E. R. R. Co., 130 id. 88.) Or if the certificate is defective and does not state by what vote the bill was passed, to the journal of the house. (Id.)

A certificate in due form, free from defects and clerical errors, would doubtless be conclusive. (Id.; people v. Devlin, 33 N. Y. 269.)

An appropriation is local when money is to be expended in a particular locality and the people of that locality are to be directly and mainly benefited, although the public are remotely

and incidentally benefited also. (People v. Allen, 42 N. Y. 378, 383.)

An act (L. 1868, chap. 776) vesting in a certain town real estate of the state required a two-thirds vote. (People ex rel. Purdy v. Commissioners, 54 N. Y. 276.)

An act authorizing the treasurers of certain counties to retain commissions allowed on the collection of state taxes is not within the section. (Bd. of Supervisors of Seneca v. Allen, 99 N. Y. 532.)

This section is no limitation on the power of the legislature to assess or tax the cost of a local improvement upon a locality. (People ex rel. N. Y. & H. R. R. Co. v. Havemeyer, 47 How. Pr. 494, 513; Town of Guilford v. Cornell, 18 Barb. 615.)

An act declaring the arrears of salaries of county officers a county charge, and directing the board of supervisors to audit and allow their accounts therefore is not within this section. (Morris v. People, 3 Den. 381.)

The "public moneys or property" of the state means property belonging to the state strictly, such as the collected revenues of the state, the buildings owned by the state, the state canals, etc. (Matter of the Taxpayers of Kingston [Co. Ct.], 40 How. Pr. 444. See also Trustees of Exempt. Firemen's Fund v. Roome, 93 N. Y. 313; People v. Supervisors of Chenango, 8 id. 324; Englishbee v. Helmuth, 3 N. Y. 294.)

The liquor tax law does not appropriate public money for local purposes within article 3, § 20, and the act did not require the assent of two-thirds of the members of the legislature. (People ex rel. Einsfeld v. Murray, 149 N. Y. 367.) (1896.)

Appropriation bills.— § 21. No money shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

[Section 8 of article VII of the amended constitution of 1846, without change.]

An act directing the application of taxes assessed on railroads to the redemption of municipal bonds, not violative of this section. (Matter of Clark v. Sheldon, 106 N. Y. 104.)

A legacy to an unknown person paid into the treasury pursuant to Code of Civil Procedure is not within the prohibition of this section, and may be paid out without an appropriation. (Evans v. Chapin, 101 N. Y. 682. See also People v. Canal Board, 55 id. 390, 399.)

Restrictions as to provisions in the appropriation or supply bills.— § 22. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

[New.]

Certain sections not to apply to commission bills. — § 23. Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the Legislature by commissioners who have been appointed pursuant to law to revise the statutes.

[Section 25 of article III of the amended constitution of 1846, without change.]

In the absence of proof to the contrary it will be presumed that an act originated in a bill so reported. (People v. Petrea, 92 N. Y. 128, 138.)

Tax bills to state tax distinctly.— § 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be

applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

[Section 20 of article III of the amended constitution of 1846, without change.]

Applies only to a general tax upon all the property of the state, and was not intended to apply to a local tax. (Jones v. Chamberlain, 109 N. Y. 109; Harlem R. R. Co. v. Havemeyer, 4 T. & C. 65.)

Applies only to the annual recurring taxes known at the time of the adoption of the provision imposed generally on all the property of the state, and not to a special tax (inheritance tax). (Matter of McPherson, 104 N. Y. 306.)

Does not apply to an act directing the application of railroad taxes. (Matter of Clark v. Sheldon, 106 N. Y. 104.)

A tax law imposing a tax of three and a half mills per dollar, "or so much thereof as may be necessary," held void. (People ex rel. Hopkins v. Supervisors of Kings, 52 N. Y. 556.)

A law imposing a tax otherwise valid is not impaired by vetoes of items in appropriation bills whereby such bills do not appropriate all the money which will probably be received under such tax. (Matter of Attorney-General, 58 Hun, 218.)

An act requiring insurance companies of another state to pay an amount equal to that imposed by the state of their origin on companies of this state is in the nature of a license fee and not prohibited by this section. (People v. Fire Association of Phila., 92 N. Y. 311.)

Mere modification in the process of collecting a tax does not violate this section. (People v. Supervisors of Ulster, 36 Hun, 491, 496. See also People ex rel. Burrows v. Supervisors of Orange, 17 N. Y. 235; Hurlburt v. Banks, 1 Abb. N. C. 157; Pumpelly v. Owego, 45 How. Pr. 219; People v. Nat. Fire Ins. Co., 27 Hun, 188; People v. Floating Dry Dock Co., 11 Abb. N. C. 40; Spencer v. Merchant, 100 N. Y. 585; W. I. B. Co. v. Town of Attica, 119 N. Y. 204.)

When ayes and nays necessary; three-fifths to constitute quorum.— § 25. On the final passage, in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation

of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

[Section 21 of article III of the amended constitution of 1846, without change.]

The provision requiring the presence of three-fifths has no reference to the passage of a military law by which a commutation tax is imposed. (People v. The Supervisors of Chenango, 8 N. Y. 317.)

Laws 1855, chapter 428, "An act for compensating parties whose property may be destroyed in consequence of mobs and riots," did not require three-fifths to constitute a quorum, although it might result in creating a local charge. (Darlington v. Mayor, etc., of N. Y., 31 N. Y. 161, 185. See also Trustees of Exempt Firemen's Fund v. Roome, 93 id. 313; Pompelly v. Owego, 45 How. Pr. 219.)

Boards of supervisors.— § 26. There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period as is or may be provided by law. In a city which includes an entire county, or two or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council, board of aldermen or other legislative body of the city.

[Section 22 of article III of the amended constitution of 1846, as amended and adopted November 7, 1899.]

The provisions of the law creating the county of Nassau that the supervisors of the towns therein shall constitute the

board of supervisors of the county does not violate this section. (Matter of Noble, 34 App. Div. 55.) (1898.)

An act providing that existing supervisors in certain towns shall constitute the board of supervisors of a newly erected county (Nassau), does not contravene this section. (Matter of Noble, 34 App. Div. 55.) (1898.)

Local legislative powers.— § 27. The Legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may, from time to time, deem expedient.

[Section 23 of article III of the amended constitution of 1846, without change.]

While the legislature is prohibited from passing a local bill laying out, opening, etc., highways, it may confer such power on the boards of supervisors. (Town of Kirkwood v. Newbury, 122 N. Y. 571, 576; People ex rel. Morrill v. Supervisors, 112 id. 585.)

An act providing that the board of supervisors may fix salary of county treasurer is valid. (Board of Supervisors of Seneca v. Allen, 99 N. Y. 532.)

An act giving to boards of supervisors in counties containing a city of over 100,000, where contiguous territory has been mapped out into streets, etc., power to lay out, open and grade the same, and to assess therefore, is not a local law under this section. (Matter of Church, 92 N. Y. 1.)

An act authorizing boards of supervisors to make local laws for the protection of shell fish is constitutional. (Smith v. Levinus, 8 N. Y. 472; Hallock v. Dominy, 7 Hun, 52. See People ex rel. Martin v. Earle, 47 How. Pr. 458.)

Legislature has power to appoint persons to become the agents of the state in carrying out a local improvement, who are not thereby constituted local officers, although the power to make such improvements is at that time vested in local authorities elected by the people. (People v. Supervisors of Oneida County, 170 N. Y. 105.) (1902.)

Extra compensation prohibited.— § 28. The Legislature shall not, nor shall the common council of any

city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.

[Section 24 of article III of the amended constitution of 1846, without change.]

A resolution of the supervisors of Albany county giving a clerk to the coroners of such county, not violative of this section. (People ex rel. Masterson v. Gallup [Sp. T. Sup. Ct.], 65 How Pr. 108; S. C. 12 Abb. N. C. 65.)

Increase of salary for remainder of term not unconstitutional. (Truesdale v. City of Rochester, 33 Hun, 574. See Cole v. State, 102 N. Y. 48, 58.)

Statute directing board of education to place teachers on pension list who retired before the establishment of pension system unconstitutional. (Mahon v. Board of Education, 171 N. Y. 263.) (1902.)

Prison labor; contract system abolished.— § 29. The Legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories in the State; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the Legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the State or any political division thereof, or for or to any public institution owned or managed

and controlled by the State, or any political division thereof.

[New.]

The provisions of law abrogated by this section are in Laws of 1889, chap. 382, article 3, amending the Revised Statutes.

ARTICLE IV.

Executive power.—Section 1. The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time, and for the same term. The Governor and Lieutenant-Governor elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, one thousand eight hundred and ninety-six, and their successors shall be chosen at the general election in that year.

[Section 1 of Article IV of the amended constitution of 1846, amended by changing the term of office of the governor and lieutenant-governor from three to two years.]

Qualifications of Governor and Lieutenant-Governor.— § 2. No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this State.

[Section 2 of article IV of the amended constitution of 1846, without change.]

Election of Governor and Lieutenant-Governor.— § 3. The Governor and Lieutenant-Governor shall be

elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the Legislature at its next annual session shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

[Section 3 of article IV of the amended constitution of 1846, without change.]

Duties and powers of Governor; compensation.—§ 4. The Governor shall be Commander-in-Chief of the military and naval forces of the State. He shall have power to convene the Legislature, or the Senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

[Section 4 of article IV of the amended constitution of 1846, amended by a change of the word "them" to "it," referring to the legislature, in the fourth sentence.]

The governor, as commander-in-chief of the military forces of the state, has power to consolidate companies and regiments (People v. Ewen, 17 How. Pr. 375); also to disband them. (People ex rel. Leo v. Hill, 126 N. Y. 497.)

No action can be maintained to recover any part of money appropriated by law to the governor for incidental expenses; the propriety of the expenditure is discretionary and not subject to judicial cognizance. (People v. Lewis, 7 Johns. R. 72.)

The governor is not required to recommend any subject in a proclamation, convening the legislature in extraordinary session. (People ex rel. Carter v. Rice, 135 N. Y. 473.)

An extraordinary session of the legislature can make a valid and constitutional apportionment. (People ex rel. Carter v. Rice, 135 N. Y. 473.)

Reprieves, commutations, and pardons to be granted by Governor.— § 5. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sen-

tence and its date, and the date of the commutation, pardon or reprieve.

[Section 5 of article IV of the amended constitution of 1846, without change.]

No pardon granted to any person imprisoned for life shall restore him to the rights of any previous marriage, or to the guardianship of any children the issue of such marriage. (R. S., Pt. II, chap. 8, tit. 1, § 7; R. S., 8th ed., p. 2596.)

A pardon that contains a provision that it shall not remove disabilities is void. (People v. Pease, 3 Johns. Cas. 333.)

A court cannot go behind a pardon to inquire into its regularity, although fraudulently obtained. (In re Edymoin, 8 How. Pr. 478.)

In case of a breach of a conditional pardon, the recipient may be remanded, and the original sentence executed. (People v. Potter, 1 Park. Cr. 47; Matter of Whalen, 47 State Rep. 313.)

A statute which in terms authorizes courts of criminal jurisdiction to suspend sentence in certain cases, after conviction, is not violative of this section. (People ex rel. v. Court of Sessions, 141 N. Y. 288.)

The distinction between the power to suspend sentence and the power to pardon pointed out. (Id.)

State prison law providing for relase of prisoners by parol board does not infringe upon governor's pardoning power. (People v. Warden of Sing Sing, 39 Misc. Rep. 113.) (1902.)

When Lieutenant-Governor to act as Governor.—§ 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the

Legislature, be out of the State, in time of war, at the head of a military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

[Section 6 of article IV of the amended constitution of 1846, without change.]

Qualifications and duties of Lieutenant-Governor; succession to the governorship.— § 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

[Section 7 of article IV of the amended constitution of 1846, amended by adding the provision conferring upon the speaker of the assembly the right of succession to the governorship.]

A vote of the state senate, determined by the casting vote of the president thereof, is a majority vote. (N. Y., L. E. & W. R. R. Co. v. City of Dunkirk, 65 Hun, 494, 500.)

Salary of Lieutenant-Governor.— § 8. The Lieutenant-Governor shall receive for his services an annual

salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the Constitution or by law.

[Section 8 of article IV of the amended constitution of 1846, without change.]

Bills to be presented to Governor; approval; passage of bill by Legislature if not approved.—§ 9. Every bill which shall have passed the Senate and Assembly shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its re-

turn, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within thirty days after such adjournment. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the Legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the Governor. All the provisions of this section, in relation to bills not approved by the Governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

[Section 9 of article IV of the amended constitution of 1846, without change.]

The adjournment referred to in this section is the final adjournment at the close of the session and not the ordinary recess taken from time to time during the continuance of the session. (Hequembourg v. City of Dunkirk, 49 Hun, 550, following the case of Soldiers' Voting Bill, 45 N. H. 607.)

The power of the governor to approve and sign a bill presented to him within ten days previous to adjournment of the legislature does not cease with the adjournment. (People v. Bowen, 21 N. Y. 517.)

ARTICLE V.

State officers.— Section 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be chosen at a general election, at the times and places of electing the Governor and Lieutenant-Governor, and shall hold their offices for two years, except as provided in section two of this article. Each of the officers in this article named, excepting the Speaker of the Assembly, shall, at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer and Surveyor who is not a practical civil engineer.

[Sections 1 and 2 of article V of the amended constitution of 1846, consolidated without change.]

First election of State officers.— § 2. The first election of the Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, pursuant to this article, shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and ninety-eight, and every two years thereafter, their successors shall be chosen for the term of two years.

[New.]

Superintendent of public works; appointment; powers and duties of.— § 3. A superintendent of public works shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office until the end of the term of the Governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the State Engineer and Surveyor; subject to the control of the Legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the Governor whenever, in his judgment, the public interest shall so require; but in case of the removal of such Superintendent of Public Works from office, the Governor shall file with the Secretary of State a statement of the cause of such removal, and shall report such removal and the cause thereof to the Legislature at its next session. The Superintendent of Public Works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by the Legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by

the Superintendent of Public Works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled for the remainder of the term for which he was appointed, by the Superintendent of Public Works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the Governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the State Engineer and Surveyor, shall be appointed by the Superintendent of Public Works, and be subject to suspension or removal by him. The Superintendent of Public Works shall perform all the duties of the former Canal Commissioners and Board of Canal Commissioners, as now declared by law, until otherwise provided by the Legislature. The Governor, by and with the advice and consent of the Senate, shall have power to fill vacancies in the office of Superintendent of Public Works; if the Senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the Senate.

[Section 3 of article V of the amended constitution of 1846, amended, by striking from such section the sentence abolishing the office of canal commissioner.]

Under this section, the superintendent of public works has the exclusive power to select and appoint his subordinates, and to determine as to the propriety of such appointments, and as to their qualifications. (People ex rel. Killeen v. Angle, 109 N. Y. 564.)

A superintendent of public works honestly and fairly exercising his discretion in matters pertaining to the canals, his conduct is not subject to the control or direction of the courts.

(Wright v. Shanahan, 61 Hun, 264. See also Yaw v. State, 127 id. 190; Clark v. State, 142 id. 101.)

Superintendent of State prisons, appointment; powers and duties of.— § 4. A Superintendent of State Prisons shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties as shall be required by law for the faithful discharge of his duties; he shall have the superintendence, management and control of State prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the Superintendent. The Comptroller shall appoint the clerks of the prisons. The Superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the Inspectors of State Prisons. The Governor may remove the Superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.

[Section 4 of article V of the amended constitution of 1846, amended. The words "were formerly" in the next section to the last are new, taking the place of the words "have heretofore been." The sentence relating to the abolishing of the office of inspector of state prisons is omitted.]

The power conferred upon the superintendent of state prisons by this section is subject to regulation and control by the legislature. (People ex rel. Griffin v. Lathrop, 71 Hun, 202.)

State prison law providing for releasing prisoners on parole held constitutional. (People v. Adams, 176 N. Y. 351.) (1903.)

Commissioners of the land office; of the canal fund; canal board.— § 5. The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be the commissioners of the land office. The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the State Engineer and Surveyor and the Superintendent of Public Works.

[Section 5 of article V of the amended constitution of 1846, amended by striking out the words "canal commissioners" and inserting in place thereof the words "superintendent of public works," to conform with section 3 of article V, ante.]

The legislature has the power to prescribe the powers and duties of the commissioners of the land office. (Rumsey v. N. Y. & N. E. R. R. Co., 130 N. Y. 88, 93.)

Powers and duties of boards.— § 6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

[Section 6 of article V of the amended constitution of 1846, without change.]

The provision of this section does not apply to officers created by the amendment of 1873 to article V, section 3. (People ex rel. Killeen v. Angle, 109 N. Y. 564. See also cases cited under section 5.)

State Treasurer; suspension by Governor.— § 7. The Treasurer may be suspended from office by the

Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer.

[Section 7 of article V of the amended constitution of 1846, without change.]

Certain offices abolished.—§ 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures or shall prevent the creation of any office for such purposes hereafter.

[Section 8 of article V of the amended constitution of 1846, without change.]

An act reorganizing the warden's office of the port of New York, and providing that certain offices shall have cognizance of all matters relating to the surveys of vessels and their cargoes, arriving in the port of New York, is not violative of this provision. (Tinkham v. Tapscott, 17 N. Y. 141.)

Civil service appointments and promotions.—§ 9. Appointments and promotions in the civil service of the State, and of all the civil divisions thereof, in-

cluding cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this State, shall be entitled to preference in appointment and promotion without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

[New.]

[The following article is a substitute for article VI of the amended constitution of 1846, and the notes at the end of the following sections will only refer to similar provisions in the sections of such article.]

A person appointed in the civil service without compliance with the terms of the law cannot compel payment of his salary by the comptroller. (People ex rel. McClelland v. Roberts, 148 N. Y. 360.) (1896.)

This section is mandatory as to provision requiring appointments to be made according to merit and fitness, but as to the machinery necessary for the conducting of a competitive examination, its execution to that extent is dependent upon the statute. (Crittenden v. Wurster, 152 N. Y. 345.) (1897.)

Competitive examination is not practicable for positions of a confidential relation to the appointing officer. (Id.)

Until the statute has provided the necessary machinery the amendment as to counties, towns and villages, remains uneffectual. (Id.)

This clause did not repeal or suspend existing statutes and rules. (People ex rel. Sweet. v. Lyman, 157 N. Y. 368.) (1898.)

A veteran has no preference so far as exemption from examination is concerned, but examination having been had a veteran is entitled to preference without regard to his standing on the fitness and merit list. (Matter of Keymer, 148 N. Y. 219.) (1896.)

The legislature having established a method by which a classification of the offices of the city shall be provided, until

such classification is made, in the absence of legislation providing for a competitive examination, the method of appointment prescribed by statute must be followed and no competitive examination is required. (People v. Keller, 35 App. Div. 493.) (1898.)

The provisions of this section absolutely require a competitive fitness examination to be made in all cases. (People ex rel. Drake v. Common Council, 26 Misc. Rep. 522.) (1899.)

The provision regulating appointments and promotions must be construed in connection with section two of article ten providing for the appointment of officers, and does not take away such power of appointment or change the officers or bodies who are to make the appointments, but relates only to the qualifications which appointees shall have to justify their appointment and the manner in which they shall be ascertained. A provision in the civil service law requiring the appointment of the person graded highest on the list is unconstitutional. (People v. Mosher, 163 N. Y. 32.) (1900.)

Provision of civil service law limiting power of removal of veterans constitutional. While the legislature cannot enact laws repugnant to this provision of the constitution it may legislate further in that direction in its discretion. (Matter of Stutzbach v. Coler, 168 N. Y. 416.)

Provisions of New York charter continuing in office as detective sergeants policemen previously appointed thereto, constitutional, since appointment was made before office was placed in competitive class. (Sugden v. Partridge, 174 N. Y. 87.) (1903.)

The permanent assignment of patrolmen of the city of New York to duty as telegraph operators, which assignment carries with it the rank and salary of a police sergeant, constitutes a promotion and cannot be made except after a civil service examination. (People ex rel. Campbell v. Partridge, 89 App. Div. 497.) (1903.)

The superintendent of out-door poor for the borough of Richmond is not a deputy of the commissioner of public charities within the meaning of the civil service law, and is entitled to the protection of the veteran exemption clause relating to discharge from office. (People ex rel. Kenney v. Folks, 89 App. Div. 171.) (1903.)

A veteran who desires to avail himself of the provisions of this section must give to the appointing power notice of the facts which entitle him to the constitutional privileges. Such a notice served after he has been dismissed is ineffectual to secure his reinstatement. (People ex rel. Dixon v. Simonson, 64 App. Div. 312.)

ARTICLE VI.

Supreme court; how constituted; judicial districts. Section 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the Justices now in office, and of the Judges transferred thereto by the fifth section of this article, all of whom shall continue to be Justices of the Supreme Court during their respective terms, and of twelve additional Justices who shall reside in and be chosen by the electors of the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts; and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration under the Constitution, of the inhabitants of the State, and thereupon reapportion the Justices to be thereafter elected in the districts so altered. The Legislature may from time to time increase the number of justices in any judicial district except that the number of justices in the first and second district or in any of the districts into which the second district may be divided, shall not be increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last state, or federal census or enum-

eration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last state or federal census or enumeration. The Legislature may erect out of the second judicial district as now constituted, another judicial district and apportion the justices in office between the districts, and provide for the election of additional justices in the new district not exceeding the limit herein provided.

[The number of supreme court judges is changed by this section from 46 to 76. The superior court of the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo and the city court of Brooklyn are abolished by section 5 of this article and the judges thereof transferred to the supreme court. Sections 6 and 28 of article VI of the amended constitution of 1846 provide for the number of "justices now in office." For city courts see amended constitution of 1846, art. VI, § 12. See, also, L. 1888, chap. 329, § 3, R. S., 8th ed., 291.]

The jurisdiction of the supreme court cannot be limited by the legislature. (People ex rel. v. Nichols, 79 N. Y. 582; De Hart v. Hatch, 3 Hun, 375.) Appellate jurisdiction of the court of appeals is, however, subject to regulation by the legislature. (Butterfield v. Rudde, 58 N. Y. 489.)

Legislature cannot confer jurisdiction upon the supreme court in admiralty cases even by stipulation. (Bartlett v. Spicer, 75 N. Y. 528; Vose v. Cockroft, 44 id. 415; Brookman v. Hamil, 43 id. 554; Matter of Steamboat Josephine, 39 id. 19; Poole v. Kermit, 59 id. 554.)

Legislature cannot abridge or limit jurisdictton of supreme court, and acts authorizing transfer of certain actions to marine court are unconstitutional. (De Hart v. Hatch, 3 Hun, 375; Alexander v. Bennett, 60 N. Y. 204; People ex rel. v. Supervisors, 49 Hun, 476.)

Constitution does not restrict power of legislature to provide for administering both legal and equitable relief in a single suit. (Phillips v. Gorham, 17 N. Y. 270.)

Statute (§ 2122 of Code of Civ. Pro.) limiting remedy by certiorari in supreme court does not affect the constitutional provision of general jurisdiction. (People ex rel. v. Supervisors, 49 Hun, 476.)

Courts are not deprived of equity jurisdiction by section 970 of the Code of Civil Procedure, directing that certain causes be tried by a jury upon the request of either party. (Eggers v. Man. El. R. R. Co., 27 Abb. N. C. 463; Underhill v. Man. El. R. R. Co., 27 id. 478.)

An act of legislature designating place where surplus moneys arising from the sale of lands in foreclosure or petition proceedings may be deposited does not restrict general jurisdiction of courts. (Matter of Estate of Stillwell, 139 N. Y. 337.)

Section 18 of the mechanics' lien law (L. 1885, chap. 342) providing for consolidation of separate actions by the court in which first action is brought does not deprive supreme court of jurisdiction. (Boyd v. Stewart, 30 Abb. N. C. 127.)

Acts confining the trial of certain actions to New York city are unconstitutional as limiting the jurisdiction of the supreme court. (Mussen v. Ausable Granite Wks., 63 Hun, 367; Getman v. Mayor, etc., of N. Y., 66 id. 236.)

Legislature cannot require the supreme court to perform other than judicial duties. (People ex rel. v. Waters, 4 Misc. Rep. 1.)

The provision in domestic commerce law that an action to recover a penalty may be brought within county where shipper resides, and "if laid in such county shall not be changed for any cause violates the provision of this section." that the supreme court is continued with general jurisdiction in law and equity. (Bell v. Niewahner, 54 App. Div. 530.)

A statute designating the counties in which certain actions shall be tried does not take away the power of the court to change the place of trial for convenience of witnesses, and therefore does not deprive the supreme court of any jurisdictional powers. (Czarnowsky v. City of Rochester, 55 App. Div. 388.)

Statute requiring sales of real estate under judgment of foreclosure to be made by sheriff instead of referee constitutional. (Sproule v. Davies, 171 N. Y. 277.) (1902.)

Judicial departments; appellate division, how constituted; Governor to designate justices; reporter; time and place of holding courts.— § 2. The legislature shall divide the State into four judicial depart-

ments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof. There shall be an appellate division of the Supreme Court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case. From all the justices elected to the Supreme Court the Governor shall designate those who shall constitute the appellate division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of such designations expire, or vacancies occur, he shall make new designations. A majority of the justices so designated to sit in the appellate division, in each department shall be residents of the department. He may also make temporary designations in case of the absence or inability to act of any justice in the appellate division, or in case the presiding justice of any appellate division shall certify to him that one or more additional justices are needed for the speedy disposition of the business before it. Whenever the appellate division in any department shall be unable to dispose of its

business within a reasonable time, a majority of the presiding justices of the several departments at a meeting called by the presiding justice of the department in arrears may transfer any pending appeals from such department to any other department for hearing and determination. No justice of the appellate division shall, within the department to which he may be designated to perform the duties of an appellate justice, exercise any of the powers of a justice of the Supreme Court, other than those of a justice out of court, and those pertaining to the appellate division, or to the hearing and decision of motions submitted by consent of counsel, but any such justice, when not actually engaged in performing the duties of such appellate justice in the department to which he is designated, may hold any term of the Supreme Court and exercise any of the powers of a justice of the Supreme Court in any county or judicial district in any other department of the State. From and after the last day of December, eighteen hundred and ninety-five, the appellate division shall have the jurisdiction now exercised by the Supreme Court at its general terms and by the general terms of the Court of Common Pleas for the city and county of New York, the Superior Court of the city of New York, the Superior Court of Buffalo and the city of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter. The justices of the appellate division in each department shall have power to fix the times and places for holding special terms therein, and to assign

the justices in the departments to hold such terms; or to make rules therefor.

[Amended and adopted November 7, 1899. The appellate division is a substitute for and has the jurisdiction of the former general term. See amended constitution of 1846, article VI, sections 7 and 28, and L. 1883, chap. 329, R. S., 8th ed., p. 291.]

Statute authorizing appellate division to appoint a special commissioner of jurors and to order a trial to be had by special jury is constitutional. (People v. Hall, 169 N. Y. 184.) (1902.)

Judge or justice not to sit in review; testimony in equity cases.— § 3. No Judge or Justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

[Section 8 of article VI of the amended constitution of 1846, amended ante.]

An appeal from an order vacating an ex parte order for the examination of a person before trial may be heard before general term of which the judge who granted the original order is a member. (Phillips v. Germania Bank, 107 N. Y. 630. And see Pistor v. Hatfield, 46 id. 249.)

This section does not restrict the power of the legislature to provide for equitable and legal relief in one suit. (Phillips v. Gorham, 17 N. Y. 270.)

Court has no power in an equity case to make a compulsory order directing testimony to be taken before a referee and the cause to be brought to trial upon the pleadings and the evidence so taken. (Farmers' Nat. Bank of Malone v. Houston, 44 Hun, 567.)

The provision of the constitution prohibiting a justice from sitting in review of a decision made by him prevents such justice from sitting in review of an order which denied a motion to vacate an order made by him. (Van Arsdale v. King, 152 N. Y. 69.) (1897.)

Terms of office; vacancies, how filled.— § 4. The official terms of the Justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of Justice of the Supreme Court the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[The first sentence of this section relating to length of term is in section 13 of article VI of the amended constitution of 1846. The remainder of the section is in substance the same as section 9 of article VI of the amended constitution of 1846.]

The term shall be for the full fourteen years, and no vacancy can exist longer than the term. (People ex rel. v. Potter, 47 N. Y. 375.)

The words "in session" indicate a present acting or being of the senate as a body, and the governor may appoint during a long adjournment. (People v. Fancher, 50 N. Y. 288.)

City courts abolished; judges become justices of Supreme Court; salaries; jurisdiction vested in Supreme Court.— § 5. The Superior Court of the city

of New York, the Court of Common Pleas for the city and county of New York, the Superior Court of Buffalo, and the City Court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-six, and thereupon the seals, records, papers and documents of or belonging to such courts, shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The Judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall, for the remainder of the terms for which they were elected or appointed, be Justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other Justices of the Supreme Court residing in the same counties. Their successors shall be elected as Justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished, shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the city and county of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such Justice or Justices as the Appellate Divisions in the respective departments which include New York

and Buffalo shall direct, unless otherwise provided by the Legislature.

[This section is new. See §§ 12, 13 of article VI of the amended constitution of 1864.]

Circuit Courts and Courts of Oyer and Terminer abolished.— § 6. Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdiction shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. Any Justice of the Supreme Court except as otherwise provided in this article, may hold court in any county.

[This section is new.]

The abolition of the Court of Oyer and Terminer was self-executing and an order transferring a pending indictment was necessary. (People v. Hoch, 150 N. Y. 291.) (1896.)

Court of Appeals; the Court of Appeals is continued.— § 7. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants. Whenever and as often

as a majority of the judges of the court of appeals shall certify to the Governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the Governor shall designate not more than four justices of the Supreme Court to serve as associate judges of Court of Appeals. The justices so designated shall be relieved from their duties as justices of the Supreme Court and shall serve as associate judges of the Court of Appeals until the causes undisposed of in said court are reduced to two hundred, when they shall return to the Supreme Court. The Governor may designate justices of the Supreme Court to fill vacancies. No justice shall serve as associate judge of the Court of Appeals except while holding the office of Justice of the Supreme Court, and no more than seven judges shall sit in any case.

[Section 2 of article VI of the amended constitution of 1846, amended and adopted November 7, 1899.]

Vacancy in Court of Appeals, how filled.— § 8. When a vacancy shall occur otherwise than by expiration of term, in the office of Chief or Associate Judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment. If any such appointment of Chief Judge shall be made from among the Associate Judges, a temporary appointment of Asso-

ciate Judge shall be made in like manner; but in such case, the person appointed Chief Judge shall not be deemed to vacate his office of Associate Judge any longer than until the expiration of his appointment as Chief Judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of Judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[Section 3 of article VI of the amended constitution of 1846, amended by a change in language.]

Jurisdiction of Court of Appeals.— § 9. After the last day of December, one thousand eight hundred and ninety-five, the jurisdiction of the Court of Appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them. The Appellate Division in any department may, however, allow an appeal upon any question of law

which, in its opinion, ought to be reviewed by the Court of Appeals.

The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to orders made or judgments rendered by any General Term before the last day of December, one thousand eight hundred and ninety-five, but appeals therefrom may be taken under existing provisions of law.

[This section is entirely new.]

It was the intent of this section to establish a constitutional right of appeal to the court of appeals from every final judgment or order made by the appellate division, and place it beyond the power of the legislature to abridge such right or take it away, but the legislature has power to further restrict such right within the limitations prescribed by the constitution and to deny the right of appeal to the court of appeals in any class of actions in its discretion, the only restriction upon the legislative power being that the right shall not be made to depend upon the amount involved. (Sciolina v. Erie Preserving Co., 151 N. Y. 50.) (1896.)

Under this section the legislature may further restrict the jurisdiction of the court of appeals, and L. 1896, chap. 559, taking away the right to appeal from unanimous judgments of affirmance in action for personal injury is constitutional. (Croveno v. Atlantic Avenue R. R. Co., 150 N. Y. 225.) (1896.)

The right to appeal is not a constitutional right. Where it does exist it is simply the continuance of an existing practice by the constitution subject to the legislative right to curtail or abolish which is founded on some statute. (People v. Rutherford, 47 App. Div. 209.) (1904.)

The provisions of this section that the legislature may further restrict the jurisdiction of the court of appeals, does not prevent it from extending such jurisdiction. (People ex rel. Com'rs of Public Charities v. Cullen, 153 N. Y. 629.) (1897.)

The provision of this section that no unanimous decision of

the appellate division, that there is evidence supporting or tending to sustain a finding of fact shall be reviewed by the court of appeals, applies to a special proceeding commenced by writ of certiorari. (People ex rel. Manhattan R. R. Co. v. Barker, 152 N. Y. 417.) (1897.)

An order of reversal based upon an exception filed to the decision of the trial court and awarding a new trial, grants a new trial "on exceptions" within this section and is reviewable by the court of appeals. (Otten v. Manhattan Ry. Co., 150 N. Y. 395.) (1896.)

Judges not to hold any other office.— § 10. The Judges of the Court of Appeals and the Justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

[Section 10 of article VI of the amended constitution of 1846, without change.]

Power conferred upon the supreme court to appoint commissioners of estimate and assessment is not unconstitutional as conferring another office of public trust. (Striker v. Kelly, 7 Hill, 9. And see Embury v. Connor, 3 N. Y. 511.)

Nor is the duty of designating a journal for the publication of judicial notices. (Printing Co. v. Mayor, etc., of N. Y., 52 Hun, 542.)

The term "office or public trust" refers to a permanent public trust or employment to be exercised generally. (Matter of Hathaway, 71 N. Y. 238.)

Act of 1858, allowing assessments in city of New York to be set aside by the supreme court for fraud or irregularity, is not unconstitutional as conferring new office or trust on justices of the supreme court. (Matter of Geekman, 19 How. Pr. 518.)

This section does not apply to a case where a judge and two others were appointed by the legislature as appraisers to fix the value of relics bought by the State. (People ex rel. v. Nichols, 52 N. Y. 478.)

The anti-trust law, conferring upon a judge administrative and non-judicial functions, held unconstitutional. (Matter of

Attorney-General, 21 Misc. Rep. 101 [1897]; affirmed, 22 App. Div. 285, but not on constitutional grounds.)

An act constituting the justices of the supreme court resident in the county of Erie a special tribunal to try police commissioners upon charges of misconduct in office is unconstitutional. (Matter of Rupp, 28 Misc. Rep. 703.) (1899.)

The anti-monopoly act does not impose non-judicial duties upon judicial officers. The duties are judicial in character because they are incident to a judicial proceeding. They are judicial in form because the justice must decide whether the application makes out a case sufficient to warrant the granting of an order under the statute. The purpose is judicial because its object is to secure testimony to be used in judicial proceedings. While the performance of administrative duties cannot be imposed by the legislature upon the supreme court, yet it can impose upon the justices of that court authority out of term to perform a variety of functions administrative or semi-administrative in character. (Matter of Davies, 168 N. Y. 89.) (1901.)

Chapter 493, Laws of 1892, relating to the construction of highways running through two or more towns of the same county held constitutional on the ground that the duties imposed by the supreme court were judicial and not administrative. (Citizens' Savings Bank v. Town of Greenburgh, 173 N. Y. 215.) (1903.)

Removal of judges.— § 11. Judges of the Court of Appeals and Justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an

opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

[Section 11 of article VI of the amended constitution of 1846 amended.]

Compensation; age restriction; assignment by Governor.— § 12. The Judges and Justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms, except as provided in section five of this article. No person shall hold the office of Judge or Justice of any court longer than until and including the last day of December next after he shall be seventy years of age. No Judge or Justice elected after the first day of January, one thousand eight hundred and ninety-four, shall be entitled to receive any compensation after the last day of December next after he shall be seventy years of age; but the compensation of every Judge of the Court of Appeals or Justice of the Supreme Court elected prior to the first day of January, one thousand eight hundred and ninety-four, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such Judge or Justice ten years or more, shall be continued during the remainder of the term for which he was elected; but any such Judge or Justice may, with his consent, be assigned by the Governor, from time to time, to any duty in the Supreme Court while his compensation is so continued.

[The first sentence of this section is the first sentence of section 14 of article VI of the amended constitution of 1846, with

amendment. The sentence relating to age limitation is a re-enactment of the same provision contained in section 13 of article 6 of the amended constitution of 1846. The provisions relating to compensation and assignment to duty in the supreme court after the expiration of the age limitation are new.]

Age limitation does not apply to justices of the peace. (Dehring v. People, 2 T. & C. 458; People v. Mann, 97 N. Y. 530.)

Ten years' service need not have been rendered during the term abridged to entitle justice to compensation after expiration. (People ex rel. Gilbert v. Wemple, 125 N. Y. 485.)

Retired justice of supreme court is entitled to $1,200 per annum, given by act of legislature for official expenses. (People ex rel. v. Wemple, 115 N. Y. 302.)

Trial of impeachments.— § 13. The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or the major part of them, and the Judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall

be liable to indictment and punishment according to law.

[Section 1 of article VI of the amended constitution of 1846 amended.]

County Courts.— § 14. The existing County Courts are continued, and the Judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two County Judges and the additional County Judge shall be chosen at the next general election held after the adoption of this article. The successors of the several County Judges shall be chosen by the electors of the counties for the term of six years. County Courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding two thousand dollars. The Legislature may hereafter enlarge or restrict the jurisdiction of the County Courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

Courts of Sessions, except in the county of New York, are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All the jurisdiction of the Court of Sessions in each county, except the county of New York, shall thereupon be vested in the County Court thereof, and all actions and proceedings then pending in such Courts of Sessions shall

be transferred to said County Courts for hearing and determination. Every County Judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A County Judge of any county may hold County Courts in any other county when requested by the judge of such other county.

[Some of the provisions of this section are taken from section 15 of article VI of the amended constitution of 1846. The jurisdiction is changed so that the limit is now two thousand dollars instead of one thousand, and courts of sessions are abolished and their jurisdiction conferred upon the county courts.]

Legislature cannot authorize board of supervisors to fix salary of county judge or surrogate. (Healy v. Dudly, 5 Lans. 115.)

When the county judge is surrogate an administrator's bond made to run to the county judge is correct. (Farley v. McConnell, 52 N. Y. 630.)

A county court may entertain an application by a village to extend a street across the tracks of a railroad where the principal place of business of the railroad company is outside of the county. (Matter of Folts Street, 18 App. Div. 568.) (1897.)

A county court has jurisdiction to entertain an action brought upon a judgment of a justice of the peace of the county and rendered against a resident thereof. (Fink v. Shoemaker, 33 Misc. Rep. 687.)

The limitation upon the jurisdiction of the county court to actions in which the complaint demands judgment for a sum not exceeding $2,000 is based wholly on the demand of the complaint, and after having acquired jurisdiction of the cause of action it has power to try to render any judgment upon any counter-claim irrespective of the amount that the defendant may plead in his answer to the cause of action stated in the complaint. (Howard Iron Works v. Buffalo Elevating Co., 176 N. Y. 1.) (1903.)

Surrogates' Courts; Surrogates, their powers and jurisdiction; vacancies.— § 15. The existing Surro-

gates' Courts are continued, and the Surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and Surrogates' Courts shall have the jurisdiction and powers which the Surrogates and existing Surrogates' Courts now possess, until otherwise provided by the Legislature. The County Judge shall be Surrogate of his county, except where a separate Surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate Surrogate, the Legislature may provide for the election of a separate officer to be Surrogate, whose term of office shall be six years. When the Surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No County Judge or Surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of County Judge or Surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any County Judge or Surrogate shall not be increased or diminished during his term of office. For the relief of Surrogates' Courts the Legislature may confer upon the Supreme Court in any county having a population exceeding four hundred thousand,

the powers and jurisdiction of Surrogates, with authority to try issues of fact by jury in probate cases.

[Some of the provisions of this section are contained in section 15 of article VI of the amended constitution of 1846.]

Collateral inheritance tax law confers no power upon surrogate prohibited by the constitution. (Matter of McPherson, 104 N. Y. 306.)

Local judicial officers.— § 16. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of County Judge and of Surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

[Section 16 of article VI of the amended constitution of 1846, amended.]

Under this section the legislature has power to authorize a special county judge to take a recognizance. (People v. Main, 20 N. Y. 434. And see for a general discussion of this section, People ex rel. v. Townsend, 102 id. 430.)

Justices of the peace; district court justices.— § 17. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect Justices of the Peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of the full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the Peace and judges or justices of inferior courts not of record, and

their clerks may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the Peace and District Court Justices may be elected in the different cities of this State in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

[Section 18 of article VI of the amended constitution of 1846, amended.]

This section does not apply to police justices in New York city, and they may be appointed. (Wenzler v. People, 58 N. Y. 516; People v. Morgan, 5 Daly, 161; affirmed, 58 N. Y. 679.) And the legislature may abolish or abridge the tenure of office of a police justice. (Coulter v. Murray, 15 Abb. [N. S.] 129.)

Legislature cannot provide for election of justices of the peace in any other manner or by any other locality than is prescribed in constitution. (Geraty v. Reid, 78 N. Y. 64.)

This section does not prevent annexing towns to cities, and in effect ending the term of a justice of the peace. (Gertum v. Supervisors of Kings, 109 N. Y. 170.)

An act of legislature extending the term of a district court judge is unconstitutional. (People ex rel. v. Bull, 46 N. Y. 57.)

Legislature may confer powers of justices of the peace of towns upon justices in cities. (Ostrander v. People, 29 Hun, 513.)

A justice of the peace in a town is a constitutional officer whose office cannot be abolished, directly or indirectly. (People ex rel. Burby v. Howland, 155 N. Y. 270.) (1898.)

The criminal jurisdiction of a justice of the peace may be limited as to a village, and the provision of the general village law conferring upon police justices exclusive jurisdiction of misdemeanors in the village, is constitutional. (People ex rel. Saloom v. Whitney, 32 App. Div. 144.) (1898.)

(See also People ex rel. Ryan v. Supervisors, 155 N. Y. 295.) (1898.)

The term of office of a justice of the peace cannot be abridged. (People v. Treacy, 46 App. Div. 216.) (1899.)

The legislature has power to adopt but one method of selecting such judicial officers, either by election or appointment. It cannot direct the use of both methods in the same city by enacting that they shall be elected in one portion thereof and appointed in the other. Such officers if elected must be chosen by all the electors of the city. (People v. Dooley, 171 N. Y. 74.) (1902.) (People ex rel. Joyce v. Guden, 75 N. Y. Supp. 347.)

Recorders and city judges in cities are not provided for in the constitution and their terms of office are within the control of the legislature. (People ex rel. Stupp v. Kemp, 83 App. Div. 554.) (1903.)

Inferior local courts.— § 18. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature, but no inferior local court hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation, any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon County Courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.

[Section 19 of article VI of the amended constitution of 1846, amended. The provisions that no such courts shall be courts of record or possess equity jurisdiction are new.]

An act establishing within a village a court with inferior and local jurisdiction, although he be named a justice of the peace and is given similar powers, is valid. (People ex rel. v. Terry, 108 N. Y. 1; Bocock v. Cochran, 32 Hun, 521.)

Act creating office of police justice in village is not void as giving too broad territorial jurisdiction. (Village of Deposit v. Vail, 5 Hun, 310.)

Legislature has power to confer upon a local inferior court, whatever civil or criminal jurisdiction it deems best, subject to constitutional restriction. (Anderson v. Reilly, 66 N. Y. 189.)

This section does not authorize the legislature to provide a district for judicial purposes not bounded by town, county, village or city lines. (People ex rel. v. Porter, 90 N. Y. 68.)

Jurisdiction is limited to localities for which such courts were established. (Rockwell v. Raymond, 5 N. Y. Supp. 642.) Legislature may prescribe the jurisdiction. (Connors v. Hilton, 66 How. Pr. 144.)

Act giving exclusive jurisdiction to courts of special sessions is valid. Jurisdiction is not exclusive unless specified. (People v. Austin, 49 Hun, 396.)

Justices of the peace in Rochester possessing no criminal jurisdiction are inferior local courts and may be abolished. (People ex rel. v. Common Council of Rochester, 11 Hun, 241.) (As to municipal court of Syracuse, see Curtin v. Barton, 139 N. Y. 505.)

The only limitation upon the jurisdiction of new magistrates created under this provision is that it be local and inferior. (Brandon v. Avery, 22 N. Y. 469.)

The jurisdiction of a local court must be exercised within the locality, and its process cannot be executed outside of it. (Geraty v. Reid, 78 N. Y. 65; Hoag v. Lamont, 60 id. 96; Connor v. Hilton, 66 How. Pr. 144.)

An act authorizing the city court of Mount Vernon to authorize the service of its summons outside of the city, held unconstitutional. (Pierson v. Fries, 3 App. Div. 418.) (1896.)

The jurisdiction of a local court cannot be extended by legislation so as to authorize service of process without its territorial limits. (Baird v. Helfer, 12 App. Div. 23 (1896); Ziegler v. Corwin, 12 App. Div. 60.) (1897.)

(See Armstrong v. Kennedy, 23 Misc. Rep. 47.) (1898.)

Although several of the above decisions hold that process of a local court cannot be served without the municipality, they were rendered under the language of section 19 of article 6 of the old constitution, which was much narrower than the language of the above section. It is believed that the section was expressly amended to obviate the effect of these decisions, and that under this section process of a local court may, if authorized by the legislature, be served anywhere in the county.

The act creating the municipal court of the city of New York is not unconstitutional because it extends the jurisdiction of that court over more than one county. It was not the intention to restrict the territorial jurisdiction of inferior local courts to that of county courts but rather to restrict their jurisdiction as to subject-matter and persons and not as to locality. (Irwin v. Met. St. R. R. Co., 38 App. Div. 253.) (1899.)

The limitation imposed upon the power of the legislature to

confer jurisdiction upon future inferior local courts relates to the jurisdiction as to subject-matter and not as to territory, non-resident parties defendant or foreign corporations. The municipal court of the city of New York is a continuation and consolidation and re-organization of the district courts of the old city of New York and is not a new inferior local court. (Worthington v. London Guarantee Co., 164 N. Y. 81.)

The conferring of jurisdiction upon the municipal court of the city of New York to entertain actions in which the defendant is a corporation though it does not appear that its legal residence is within the county is not unconstitutional. Such jurisdiction having long been exercised by justices of the peace. (Dodge Mfg. Co. v. Nassau Show Case Co., 44 App. Div. 603 (1899); Kantro v. Armstrong, 44 App. Div. 506.) (1899.)

Act appointing commissioners to audit certain outstanding claims against the city of Syracuse does not violate this section. (City of Syracuse v. Hubbard, 64 App. Div. 587.) (1901.)

The legislature had power to confer jurisdiction upon the municipal court of the city of New York in actions for the recovery of money only against non-resident natural persons having a place of business in the city. (Routenberg v. Schweitzer, 165 N. Y. 175.) (1900.)

Clerks of courts.— § 19. Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The Justices of the Appellate Division in each department shall have power to appoint and to remove a clerk, who shall keep his office at a place to be designated by said Justices. The Clerk of the Court of Appeals shall keep his office at the seat of government. The Clerk of the Court of Appeals and the Clerks of the Appellate Division shall receive compensation to be established by law and paid out of the public treasury.

[Section 20 of article VI of the amended constitution of 1846, amended. The clerk of appellate division is a new office.]

No judicial officer, except justice of the peace, to receive fees; not to act as attorney or counselor.— § 20. No judicial officer, except Justices of the Peace,

shall receive to his own use any fees or perquisites of office; nor shall any Judge of the Court of Appeals, or Justice of the Supreme Court, or any County Judge or Surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practice as an attorney or counselor in any court of record of this State, or act as referee. The Legislature may impose a similar prohibition upon County Judges and Surrogates in other counties. No one shall be eligible to the office of Judge of the Court of Appeals, Justice of the Supreme Court, or, except in the county of Hamilton, to the office of County Judge or Surrogate, who is not an attorney and counselor of this State.

[This section contains the provisions of section 21 of article VI of the amended constitution of 1846. The remainder of the section is new.]

The objection that a referee was disqualified because at the time of his appointment he was a county judge of a county having more than 120,000 inhabitants based upon judicial notice alone is determined by the records of the last official enumeration of the inhabitants of the state. (Adams v. Elwood, 176 N. Y. 106.) (1903.)

The appellate division has not jurisdiction to suspend from practice or remove from his office as attorney a surrogate who practices law during his term of office in violation of this section. (Matter of Silkman, 88 App. Div. 102.) (1903.)

Publication of statutes.— § 21. The Legislature shall provide for the speedy publication of all statutes, and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

[Section 23 of article VI of the amended constitution of 1846, amended.]

Terms of office of present justices of the peace and local judicial officers.— § 22. Justices of the Peace

and other local judicial officers provided for in sections seventeen and eighteen, in office when this article takes effect, shall hold their offices until the expiration of their respective terms.

[Section 25 of article VI of the amended constitution of 1846, amended.]

Abolition of office of police justice in New York city, held not in violation of this section. (Koch v. Mayor, 152 N. Y. 72 [1897]; Stenson v. Koch, 152 N. Y. 87; Matter of Quinn, 152 N. Y. 89.)

Courts of special sessions.— § 23. Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

[Section 26 of article VI of the amended constitution of 1846, without change.]

Section is not limited to offenses of the grade specified created by statute after the adoption of such section. (People ex rel. v. Dutcher, 83 N. Y. 240.)

ARTICLE VII.

State credit not to be given.— Section 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

[Section 9 of article VII of the amended constitution of 1846, without change.]

The legislature may require insurance companies to deposit a fund with the state insurance department. (Attorney-General v. North Am. Life Ins. Co., 82 N. Y. 172.)

Railroad grade crossing act does not violate this section. (Matter of B. & A. R. R. Co., 64 App. Div. 257.) (1901.)

State debts, power to contract.— § 2. The State may, to meet casual deficits or failures in revenues, or

for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

[Section 10 of article VII of the amended constitution of 1846, without change.]

Neither the legislature or any state department can create a debt or incur an obligation for or in behalf of the state, except as to the amount and in the manner provided by the constitution. (People ex rel. v. Supervisors of Kings Co., 52 N. Y. 556, 563.)

State debts to repel invasions.— § 3. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

[Section 11 of article VII of the amended constitution of 1846, without change.]

Limitation of legislative power to create debts.— § 4. Except the debts specified in sections two and three of this article, no debts shall be hereafter contracted by or in behalf of this state, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct

annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?" The legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on, within three months after its passage or at any general election when any other law, or any bill shall be submitted to be

voted for or against. The legislature may provide for the issue of bonds of the state to run for a period not exceeding fifty years in lieu of bonds heretofore authorized but not issued and shall impose and provide for the collection of a direct annual tax for the payment of the same as hereinbefore required. When any sinking fund created under this section shall equal in amount the debt for which it was created, no further direct tax shall be levied on account of said sinking fund and the legislature shall reduce the tax to an amount equal to the accruing interest on such debt.

Sinking fund, how kept and invested.— § 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the State shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

[Section 13 of article VII of the amended constitution of 1846, without change.]

Claims barred by statute of limitations.— § 6. Neither the Legislature, canal board, nor any person or persons acting in behalf of the State, shall audit, allow or pay any claim which, as between citizens of the State, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claim duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant

shall be under legal disability, the claim may be presented within two years after such disability is removed.

[Section 14 of article VII of the amended constitution of 1846, amended by striking out certain provisions probably deemed obsolete.]

Under this section it is not necessary to avoid the limitations to show that presentation has been made to the board of audit or its successor, the board of claims. Presentment to the legislature or to any officer or body having jurisdiction to pay, allow or act upon the claim is sufficient, if after such presentation the same has been prosecuted with reasonable diligence. (Corkings v. State, 99 N. Y. 491.)

This does not apply to a claim for services and materials furnished state officers, which is not enforceable in any tribunal until it receives recognition from the legislature, and the limitation does not begin to run until the enabling act has been passed. (O'Hara v. State of N. Y., 112 N. Y. 146.)

Where a meritorious claim against the state was barred at the time of its submission to the board of claims by the intervention of the general statute of limitations, the legislature cannot confer power upon the board of claims to allow or pass upon such claim. (Gates v. State, 128 N. Y. 221.)

The legislature has the right to enlarge the time in which a claim in any particular case may be filed, provided it does not itself audit or permit any other body to audit or allow a claim which, as between citizens, is outlawed. (Parmenter v. State, 135 N. Y. 134, citing Cole v. State, 102 id. 48, 53.)

Such limitation can only be said to run against the claimant during the time which he would have been authorized to present his claim before some tribunal qualified to hear and determine his claim by an act of the legislature. (Parmenter v. State, 153 N. Y. 279.) (1897.)

This section only applies to a case where a tribunal has been constituted by the legislature to hear and determine the claim in controversy, and the limitation only commences to run from that date. (Supervisors of Cayuga Co. v. State, 153 N. Y. 279.) (1897.)

Section considered. (Coxe v. State, 144 N. Y. 396.) (1895.)

The legislature has no power to extend the statute of limitations in respect to its running against a claim against the state. (Bissell v. State, 70 App. Div. 238.) (1902.)

Statute authorizing comptroller to audit claim of county of Essex for excessive taxes paid unconstitutional as to claim barred by statute of limitations. (People v. Miller, 85 App. Div. 145.) (1903.)

Forest preserve.— § 7. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

Where the special condemnation proceedings prescribed by the Adirondack Park act of 1897 were fully completed the land then became a part of the forest preserve, and thereupon the provisions of this section immediately applied and intervened against the private owner. The creation of the park is a part of the permanent policy of the state. The use is not restricted either by legislation or circumstances to a special locality or to a limited number of inhabitants, but is extended to all the people and constitutes a public use and purpose. (People v. Adirondack R. R. Co., 160 N. Y. 225.) (1899.)

Canals, not to be sold; not applied to certain canals; disposition of funds.— § 8. The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal; but they shall remain the property of the State and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposition

of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.

[Section 6 of article VII of the amended constitution of 1846, amended.]

Under this section the legislature cannot authorize the imposition of a tax or assessment upon lands of a canal by a municipal corporation which may result in its being sold or leased. (Elwood v. City of Rochester, 43 Hun, 102.)

This section does not affect the sale of abandoned canals. (People v. Stephens, 13 Hun, 17; De Witt v. E. T. R. Co., 134 N. Y. 495; Eldridge v. City of Binghamton, 120 id. 300, 315.)

No citizen can acquire the prescriptive right to use the waters of the canals. (Burbank v. Fay, 5 Lans. 397); but the legislature may authorize the use of surplus waters of canal feeders. (Comstock v. City of Syracuse, 5 N. Y. Supp. 834; Sweet v. City of Syracuse, 129 N. Y. 316.)

Legislature has authority to authorize the filling in of the North Side Cut canal, a former adjunct of the Oswego canal, but since fallen into disuse, as a mere appurtenance thereto unnecessary to its use and not recognized as part of the canal system nor protected by the canal law. (Lynch v. Partridge, 36 Misc. Rep. 302.) (1902.)

No tolls to be imposed; contracts for work and materials; no extra compensation.— § 9. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The Legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on the canals shall be made with the persons who shall offer to do or provide the same at the lowest

price, with adequate security for their performance. No extra compensation shall be made to any contractor; but, if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

[Section 3 of article VII of the amended constitution of 1846, amended by striking out certain obsolete provisions relating to the "canal debt sinking fund."

A discretionary power is vested in the officers authorized to award a contract, to determine who is the "lowest bidder" and what is "adequate security." This provision should be applied according to its spirit and not literally. (People ex rel. v. Fay, 3 Lans. 398; People v. Contracting Board, 27 N. Y. 378.)

The canal board cannot, after a contract has been awarded, increase the price of work and materials to be subsequently done or provided under such contract, even if authorized by the legislature. (People ex rel. v. Canal Board, 4 Lans. 272.)

This section secures to the state a contract at the lowest prices bid, with security for its performance and the power of enforcing it against the contractor and sureties; the power of modifying such contract, or making further allowances by way of increasing prices or otherwise, has always resided in the legislature, and the provisions of this section do not interfere therewith. (People ex rel. v. Dayton, 55 N. Y. 367.)

There is no restriction upon the legislature's relieving a contractor from the effect of a hard bargain. (People ex rel. v. Densmore, 1 Sup. Ct. [T. & C.], 280.)

The last sentence in this section was first adopted as an amendment to this section in November, 1874, and the cases here cited, relating to the additional compensation, were decided prior to the adoption thereof, and may be affected by such amendment.

Canal improvement, and cost thereof.— § 10. The canals may be improved in such manner as the Legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section four of this article, or the cost of such improvement may

be defrayed by the appropriation of funds from the State treasury, or by equitable annual tax.

[New.]

Payment of State debts.— § 11. The Legislature may appropriate out of any funds in the treasury, moneys to pay the accruing interest and principal of any debt heretofore or hereafter created, or any part thereof and may set apart in each fiscal year, moneys in the State treasury as a sinking fund to pay the interest as it falls due and to pay and discharge the principal of any debt heretofore or hereafter created under section four of article seven of the constitution until the same shall be wholly paid, and the principal and income of such sinking fund shall be applied to the purpose for which said sinking fund is created and to no other purpose whatever; and, in the event such moneys so set apart in any fiscal year be sufficient to provide such sinking fund, a direct annual tax for such year need not be imposed and collected, as required by the provisions of said section four of article seven, or of any law enacted in pursuance thereof.

Improvement of highways.— § 12. A debt or debts of the State may be authorized by law for the improvement of highways. Such highways shall be determined under general laws, which shall also provide for the equitable apportionment thereof among the counties. The aggregate of the debts authorized by this section shall not at any one time exceed the sum of fifty millions of dollars. The payment of the annual interest on such debt and the creation of a sinking fund of at

least two per centum per annum to discharge the principal at maturity shall be provided by general laws whose force and effect shall not be diminished during the existence of any debt created thereunder. The legislature may by general laws require the county or town or both to pay to the sinking fund the proportionate part of the cost of any such highway within the boundaries of such county or town and the proportionate part of the interest thereon, but no county shall at any time for any highway be required to pay more than thirty-five hundredths of the cost of such highway, and no town more than fifteen hundredths. None of the provisions of the fourth section of this article shall apply to debts for the improvement of highways hereby authorized.

ARTICLE VIII.

Corporations, formation of.— Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

[Section 1 of article VIII of the amended constitution of 1846, without change.]

The provision of this section is permissive, not mandatory. (Matter of Taxpayers of Kingston, 40 How. Pr. 44.)

An act reorganizing an old corporation is not within this section. (Mosher v. Hilton, 15 Barb. 657); nor an act remedying a technical defect in the organization. (Syracuse City Bank

v. Davis, 16 id. 188); nor an act regulating an existing corporation. (Attorney-General v. North Am. Life Ins. Co., 82 N. Y. 172.)

A special act for incorporation is not violative of this section by reason of the existence of a general law. Whether an act is necessary or not is in the discretion of the legislature. (People v. Bowen, 21 N. Y. 517.)

The legislature may by special act impose such conditions, restrictions and burdens upon railroad corporations as the public good requires. (People ex rel. v. Boston & Albany R. R. Co., 70 N. Y. 569.)

The legislature may pass a special act requiring a railroad corporation organized under the general railroad act to pay a tax upon gross receipts instead of a license fee as before prescribed. Such act may be deemed an amendment of the charter of the company, and so within the power reserved to the legislature by this section. (Mayor v. Twenty-third Street R. R. Co., 113 N. Y. 311.)

Under such reserved power the legislature cannot deprive a corporation of its property, or interfere with or annul its contract with third persons. (Id., citing People v. O'Brien, 111 N. Y. 1. See People ex rel. Gage v. Lonnas, 54 Hun, 604; People v. O'Brien, 111 N. Y. 2; Booth v. R. W. & O. T. R. R. Co., 44 St. Rep. 9, 11.)

A law depriving a turnpike corporation of its right to exact toll from bicycles is unconstitutional, notwithstanding the right of the legislature to alter or amend a charter. (Rochester & C. Turnpike Road Co. v. Joel, 41 App. Div. 43.) (1899.)

Every person who becomes a member of a corporation does so with full knowledge that it may at any time be changed from a mutual to a stock corporation upon certain terms and conditions, and that those terms may at any time be changed by the legislature. (Grobe v. Erie County Insurance Co., 39 App. Div. 183.) (1899.)

The legislature has the power to alter and amend in its discretion all general laws relating to the creation of corporations. (Barnes v. Arnold, 45 App. Div. 314.) (1899.)

An act authorizing the incorporation of building exchanges and boards of trade by general law is constitutional. (Reynolds v. Plumbers' Assn., 30 Misc. Rep. 709.) (1899.)

A school district is a quasi corporation and it is within the power of the legislature to say that such a corporation shall not appeal from the determination of the superintendent of public instruction. (People v. Skinner, 74 App. Div. 58.) (1902.)

A school district is a municipal corporation coming within the exception of this section. (Board of Education v. Board of Education, 76 App. Div. 355.) (1903.)

The general franchise of a corporation is its right to live and do business by the exercise of the corporate powers granted by the state. The grant of a franchise carries no stipulation that it shall be exempt from taxation. (People ex rel. Met. St. Ry. Co. v. Tax Comrs., 174 N. Y. 417.) (1903.)

A corporation is bound to conform to the law in existence at the time it acts and to abide the constitutional will of the legislature. (Palmer v. Hickory Grove Cemetery, 84 App. Div. 600.) (1903.)

An ordinance prohibiting posting of advertisements on private property without consent of park board unconstitutional. (People v. Green, 85 App. Div. 400.) (1903.)

A corporation is subject to the general statutes of the state in which it is organized applicable to its conduct and management as well as to the reservation of the right on the part of the legislature to alter its character by subsequent laws, and the stockholders must be recorded as consenting not only to the existing law but to such alterations as may be made. (Martin v. Remington-Martin Co., 95 App. Div. 18.) (1904.)

Dues of corporations.— § 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

[Section 2 of article VIII of the amended constitution of 1846, without change.]

This does not include dues to directors. (McDowall v. Sheehan, 129 N. Y. 200.)

Corporation, definition of term.— § 3. The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be sub-

ject to be sued in all courts in like cases as natural persons.

[Section 3 of article VIII of the amended constitution of 1846, without change.]

The provision that corporations shall be subject to be used in like cases as natural persons, is an enabling, and not a restricting one, and summary proceedings to enforce a liability are valid. (Matter of Empire City Bank, 18 N. Y. 179.)

This provision was intended to confer on corporations the capacity to be sued, not to define cases in which suits may be maintained against them. (Gray v. City of Brooklyn, 10 Abb. [N. S.] 186; Van Vranken v. City of Schenectady, 31 Hun, 516.)

A provision in a corporate charter that "all applications for injunctions" shall be made only to the supreme court is void, being a violation of this section. (Story v. N. Y. Elevated R. R. Co., 3 Abb. N. C. 478.)

A statute requiring a notice before an action can be maintained against a municipal corporation because of personal injuries received from defective sidewalks, is constitutional. (Smith v. City of Rochester, 46 State Rep. 727, citing McNally v. City of Cohoes, 127 N. Y. 350.)

As to liability of joint-stock associations to taxation under statutes taxing corporations, see People ex rel. Platt v. Wemple, 117 N. Y. 136; citing Waterbury v. Merchants' Union Express Company, 50 Barb. 158; Westcott v. Fargo, 6 Lans. 319; People ex rel. Winchester v. Coleman, 133 N. Y. 279.

Corporations have not the general power to sue in all kinds of actions, but only in those which relate to their corporate rights, just as the citizen is confined to actions in which he has a real interest. A school district can have no standing in the courts except for the purpose of protecting and maintaining its corporate powers and in carrying out the objects for which it was created. (Board of Education v. Board of Education, 76 App. Div. 355.)

Savings bank charters; restrictions upon trustees; special charters not to be granted.— § 4. The Legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made

to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The Legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

[Section 4 of article VIII of the amended constitution of 1846, without change.]

The provision relating to the granting of "special charters for banking purposes" relates to banking business that might be carried on at the time of the adoption of the provision in 1846, as authorized by the banking act, passed April 18, 1838; and, therefore, a special charter granted to the United States Deposit Company is valid. (United States Deposit Co. v. Brady, 20 Barb. 119; Pardee v. Fish, 60 N. Y. 265.)

Franchise tax on savings bank held constitutional. Interest accrued on investments, although not yet due, should be included and stocks and bonds should be assessed at par value although actual value is less than par. (People v. Miller, 84 App. Div. 168.) (1903.)

Specie payment.— § 5. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation, issuing bank notes of any description.

[Section 5 of article VIII of the amended constitution of 1846, without change.]

Registry of bills or notes.— § 6. The Legislature shall provide by law for the registry of all bills or

notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

[Section 7 of article VIII of the amended constitution of 1846, without change.]

Liability of stockholders of banks.— § 7. The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

[Section 7 of article VIII of the amended constitution of 1846, amended.]

This section applies to banks chartered before the constitution of 1846. (Matter of Reciprocity Bank, 17 How. Pr. 323.)

The liability of a stockholder under this section is not limited to the amount of capital stock which he has agreed to pay, but it extends to an amount equal to the stock held by him and additional thereto. (Matter of Empire City Bank, 18 N. Y. 179; Briggs v. Penniman, 8 Cow. 387.)

(See Barnes v. Arnold, 23 Misc. Rep. 197.) (1898.)

Billholders of insolvent bank, preferred creditors.— § 8. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

[Section 8 of article VIII of the amended constitution of 1846, without change.]

Credit or money of the State not to be given.— § 9. Neither the credit nor the money of the State shall

be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provison for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes.

[Section 10 of article VIII of the amended constitution of 1846, without change.]

This provision has reference to moneys raised by taxation throughout the state and paid out of the state treasury, and does not prevent the legislature from authorizing a board of supervisors to impose a tax for the relief of poor through the instrumentality of a charitable institution. (Shepherd's Fold v. Mayor, etc., of New York, 96 N. Y. 137; White v. The Inebriates' Home for Kings Co., 141 id. 123.)

This section refers to private and business corporations, not to a municipality. (Supervisors of Cayuga Co. v. State, 153 N. Y. 279.) (1897.)

Limitation of indebtedness of counties, cities, towns and villages; exception as to city of New York.— § 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may

be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of said county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as now may exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained, in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation

of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted; except that debts incurred by the city of New York after the first day of January, nineteen hundred and four, and debts incurred by any city of the second class after the first day of January, nineteen hundred and eight, to provide for the supply of water shall not be so included. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt. [Amended by vote of People, Nov. 7, 1905.]

[Section 11 of article VIII of the amended constitution of 1846, with the following changes: (1) Extending the Limitation of indebtedness to all cities and counties; (2) providing that certificates or bonds issued in anticipation of the collection of taxes, not retired within five years, water bonds, and debts incurred by a part of a city shall be included in ascertaining the power to contract further indebtedness; and (3) providing

that the power of a county to contract a debt shall cease when the boundaries of the county and city shall become co-terminus.]

[Section 11 of article VIII of the amended constitution of 1846, amended.]

The legislature has power to compel a town to pay bonds issued for a local improvement, although the statute under which they were issued is unconstitutional. (Knapp v. Town of Newton, 1 Hun, 268; Town of Cherry Creek v. Becker, 123 N. Y. 161.)

This section does not prohibit the legislature from enacting a statute authorizing two cities to construct a public bridge connecting them. (People ex rel. v. Kelly, 76 N. Y. 475.)

An issue of bonds to raise money to make immediate payment for local improvements, to be reimbursed by a subsequent assessment on the landowners benefited is not a loaning of city "credit or money" within the prohibition of this section. (People ex rel. v. Banks, 67 N. Y. 568.)

The caring for the poor of a city through the instrumentality of a private corporation is not prohibited by this section, and is not a gift of city money. (The Shepherd's Fold v. Mayor of N. Y., 96 N. Y. 137.) An act providing that a part of city excise money be paid to the use of an inebriate asylum for the care of inebriates of a certain locality is making a provision for the support of the poor. (White v. The Inebriate Home for Kings Co., 141 id. 123.)

The creation of a liability on towns for damages occasioned by defective highways and bridges is not a gift of the money or property of the towns to or in aid of an individual within the meaning of this section. (Bidwell v. Town of Murray, 40 Hun, 190.)

An act authorizing a town holding railroad bonds to exchange them for common stock in the same railroad is unconstitutional. (Town of Wheatland v. Taylor, 29 Hun, 70.)

The creation of a debt for the purchase of lands outside the city limits for a park, is for a "city purpose," and therefore valid. (Matter of Mayor, etc., of New York, 99 N. Y. 569.)

And the creation of a debt for the construction and operation of an electric light system by a city for its own and the use of its inhabitants is for a "city purpose." (Hequembourg v. City of Dunkirk, 49 Hun, 550.)

Municipalities have the right to compromise a claim which they dispute, but which in the end they deem wise and prudent

to acknowledge in part. (Hills v. Peekskill Savings Bank, 101 N. Y. 490.)

Stocks and bonds created by the city of New York and held by the commissioners of the sinking fund are not debts to be met in the future by taxation, and are not such debts as the municipality can be called upon to pay. (Bank for Savings in New York City v. Grace, 102 N. Y. 313.)

The issue of bonds by a city for a water supply is for a "city purpose" and therefore not within the prohibition of this section. (Sweet v. City of Syracuse, 129 N. Y. 316.)

This section only imposes a limitation upon water bonds, the issue of which passes the limit of indebtedness, and water bonds issued within such limit may be made to run for a longer period than twenty years. (City of Rochester v. Quintard, 136 N. Y. 221.)

In determining the limit of indebtedness, the valuation of real estate in the city and county is to be taken distributively and not collectively. (Adams v. East River Savings Inst., 136 N. Y. 52.)

A city purpose must be one necessary for the common good and general welfare of the people of the municipality, sanctioned by its citizens, public in character and authorized by the legislature. (Sun Printing Co. v. Mayor, 151 N. Y. 257.) (1897.)

The New York Rapid Transit Act upheld as providing for a city purpose. (Id.)

The "drafted men's act" held unconstitutional, as violative of the provisions prohibiting the giving of money or property in aid of an individual. (Bush v. Board of Supervisors, 159 N. Y. 212.) (1899.)

An act providing for the reimbursement of counsel fees incurred by city or county official successfully defending proceedings instituted to remove him from office and convict him of crime committed in connection with official duties are unconstitutional. (Matter of Straus, 44 App. Div. 425.) (1899.) (Charman v. City of New York, 168 N. Y. 80.) (1901.) (Matter of Fallon, 28 Misc. Rep. 748; Matter of Jensen, 28 Misc. Rep. 378. Affd., 44 App. Div. 509.)

Provisions of labor law relative to prevailing rate of wages is unconstitutional because it requires the expenditure of the money of the city or that of the local property-owner for other than city purposes. (People ex rel. Rodgers v. Coler, 166 N. Y. 1.) (1901.)

Railroad grade crossing act does not violate this section. (Matter of B. & A. R. R. Co., 64 App. Div. 257.) (1901.)

Chapter 448, Laws 1896, prohibiting harboring of dogs without annual license procured from society for prevention of cruelty to animals, so far as it compels the owners of dogs to pay license fees to such society, is unconstitutional, since such fees are public moneys, and their appropriation to a private society is a gift of public moneys to or in aid of an association, corporation or private undertaking. (Fox v. Mohawk & H. R. Humane Assn., 165 N. Y. 517.) (1901.)

Where a final judgment has been rendered in favor of the county upon the merits of a claim, the legislature cannot, through a special act, vacate or disregard it and direct the levy of a tax to pay it, but where the judgment is not upon the merits, but is obtained on account of a technical defect in the authority of its officers to contract the debt, the legislature may direct a re-examination and determination, and if found to be just that it be paid. (Matter of Green, 166 N. Y. 485.) (1901.)

An act providing for the erection of soldiers and sailors' monument in the city of New York constitutional. (Parsons v VanWyck, 56 App. Div. 329.) (1901.)

Limitation upon power of county to incur indebtedness does not apply to obligations of county for current expenses for salaries of county officers. (McGrath v. Grout, 171 N. Y. 7.) (1902.)

Semble. That act authorizing payment of pension by the city to the widow of a policeman who was not a member of the force at the time of his death and had died before enactment of statute would be unconstitutional. (People v. Partridge, 172 N. Y. 305.) (1902.)

A clause in a municipal contract for local improvement that the contractor can enforce payment only to the extent that money is collected is not a pledging of the city's credit. The debt created under such a contract is not an obligation or liability of the city as the contractor is limited to and relies upon the specific fund realized from the collection of the assessments for the payment of the indebtedness and there is no infraction of the constitutional debt limitation, even though the sum to be paid overruns that boundary. Special franchises appearing upon the assessment-roll of the city are real property to be construed as part of the assessable real estate of the city. Cash resources of the city which can only be applied upon specific outstanding obligations should be deducted in determining whether the debt limit has been exceeded but general cash resources should not be taken into account. (Kronsbein v. City of Rochester, 76 App. Div. 494.) (1902.)

Statute directing payment by a county of compensation to an attorney assigned to defend a prisoner accused of capital offense held constitutional. (People v. Grout, 87 App. Div. 193.) (1903.)

Act authorizing city of New York to convey property to Mount Sinai hospital held to be a gift of public property for private use and unconstitutional. (Mount Sinai Hospital v. Hyman, 92 App. Div. 270.) (1904.)

State board of charities; State commission in lunacy; State commission of prisons.— § 11. The Legislature shall provide for a State board of charities, which shall visit and inspect all institutions, whether State, county, municipal, incorporated or not incorporated, which are of charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions, hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a State commission in lunacy which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a State commission of prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime or detained as witnesses or debtors.

[New. For acts creating present state board of charities, see L. 1867, chap. 951; L. 1873, chap. 571, and 1878, chap. 661; R. S., 8th ed., pp. 2137-45. For acts relating to the present state commission in lunacy, see L. 1889, chap. 283, as amended by L. 1890, chap. 273; R. S., 8th ed. (Supp.), 3436.]

Boards appointed by Governor.— § 12. The members of the said board and of the said commissions shall

be appointed by the Governor, by and with the advice and consent of the Senate; and any member may be removed from office by the Governor for cause, an opportunity having been given him to be heard in his defense.

[New.]

Existing laws to remain in force.— § 13. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature. The visitation and inspection herein provided for shall not be exclusive of other visitation and inspection now authorized by law.

[New.]

Maintenance and support of inmates of charitable institutions.— § 14. Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for

any inmate of such institutions who is not received and retained therein pursuant to rules established by the State board of charities. Such rules shall be subject to the control of the Legislature by general laws.

[New.]

This section created a mere limitation on legislative power and future action by the legislature, but did not render nugatory existing laws. (People ex rel. Inebriates' Home v. Comptroller of Brooklyn, 152 N. Y. 399.) (1897.)

This section operated presently so that now the time rules were established by the state board, no payment of inmates of charitable institutions not received or retained in pursuance thereof would be justified. (People ex rel. N. Y. Institution for Blind v. Fitch, 154 N. Y. 14.) (1897.)

The New York Institution for the Blind held a charitable institution under this section. (People ex rel. N. Y. Institution for Blind v. Fitch, 154 N. Y. 14.) (1897.)

Funds raised by taxation may be paid for instruction in an orphan asylum subject to the rules and regulations of the public schools and to the visitation of the state board of charities. (Sargent v. Board of Education, 177 N. Y. 317.) (1903.)

Act authorizing payment of public moneys to a charitable institution for support of inmates who are not received and retained therein pursuant to the rules established by the state board of charities are superseded and repealed by this section and such payment is unconstitutional. (Matter of New York Juvenile Asylum, 172 N. Y. 50.) (1902.)

This section contemplates the payment of money to charitable institutions to be applied subject to the rules and regulations established by the state board of charities and not the making of absolute grants of real estate subject to no restrictions whatever. (Mount Sinai Hospital v. Hyman, 92 App. Div. 270.) (1904.)

Commissioners continued in office.— § 15. Commissioners of the State board of charities and commissioners of the State commission in lunacy, now holding office, shall be continued in office for the term for which

they were appointed, respectively, unless the Legislature shall otherwise provide. The Legislature may confer upon the commissions and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution.

[New.]

ARTICLE IX.

Common schools.— Section 1. The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.

[New.]

The school board is authorized to maintain separate schools for the education of colored children and to exclude them from the other schools having made the same provisions for their education as are made for others so far as the nature, extent and character of education and facilities for maintaining it are concerned. (People v. School Board, 161 N. Y. 598.) (1900.)

The maintenance and support of an educational system is not a constitutional right but rather a privilege, and is subject to such reasonable regulations as the legislature may impose, provided that such regulations operate equally upon all persons in the same class and under the same conditions. (Matter of Viemaster v. White, 88 App. Div. 44.) (1903.)

Regents of the university.— § 2. The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the

Legislature, shall be exercised by not less than nine regents.

[New.]

Common school, literature and the United States deposit funds.— § 3. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.

[Section 1 of article IX of the amended constitution of 1846, without change.]

A statute authorizing an orphan asylum to share in the common school fund would be in violation of this section. (People ex rel. v. Board of Education, 13 Barb. 400.)

The manner of the disposition of the common school fund is left to the legislature. (Dallas v. Fosdick, 40 How Pr. 249, 252.) But the legislature cannot appropriate therefrom for the construction of an astronomical observatory. (People ex rel. v. Allen, 42 N. Y. 401.) Nor for the benefit of a normal school. (Gordon v. Cornes, 47 id. 608.)

The words "common schools" as used in this section mean such schools as are open to all, and not confined to any class. People v. Board of Education, 13 Barb. 400; People ex rel. v. Crissley, 45 Hun, 19.)

No aid in denominational schools.— § 4. Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or per-

mit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

[New.]

An orphan asylum subject to the rules and regulations of the public schools and to the visitation of the state board of charities is not within the prohibition of this section as a religious denominational institution. (Sargent v. Board of Education, 177 N. Y. 317.) (1903.)

ARTICLE X.

Sheriffs, clerks of counties, district attorneys and registers; Governor may remove.—Section 1. Sheriffs, clerks of counties, district attorneys and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every three years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years as the Legislature shall direct. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer, in this

section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

[Section 1 of article X of the amended constitution of 1846, amended. The reference to "coroners" is omitted; therefore, that office ceases to be a constitutional one and may be abolished by the legislature. The provision that in counties whose boundaries are the same as cities, these officers shall be elected for two or four years as the legislature shall direct, is new.]

Officers elected to fill vacancies serve for the full term of three years. (People v. Green, 2 Wend. 266; Coutant v. People, 11 id. 511.)

Where the constitution provides for the appointment of an officer in a particular manner the legislature has no power to create a new officer to perform the same duties, or the principal part of the same duties. (Warner v. People, 2 Denio, 272.)

An act depriving the sheriff of the custody and control of the jail and the prisoners therein deprived him of common-law powers and duties pertaining to his office prior to the adoption of this section and is unconstitutional. (People ex rel. v. Keeler, 29 Hun, 175.)

An act making counties liable for damages caused by mobs and riots is not in conflict with the provision that counties shall not be made liable for acts of sheriffs. (Moody v. Supervisors, 46 Barb. 659.)

The provision of this section did not authorize an extension of the term of the district attorney of Kings county in office when the constitution took effect, to four years. (People ex rel. Eldred v. Palmer, 154 N. Y. 133.) (1897.)

A statute which is unconstitutional because attempting to deprive justices of peace of their jurisdiction in criminal matters, is also operative in so far as it attempts to deprive a deputy sheriff of compensation for executing the processes of such justices, whether a deputy sheriff be regarded as a constitutional officer or not. (People ex rel. Ryan v. Supervisors, 155 N. Y. 295.) (1898.)

Act authorizing assignment of a deputy attorney-general to act as counsel for the metropolitan superintendent of elections does not violate the provisions of this section, providing for

election of district attorney. (People v. Kramer, 33 Misc. Rep. 209.) (1901.)

The power vested in the governor by this section to remove officers therein designated upon charges and after a hearing is executive and not judicial and the exercise of such power is not reviewable by the courts. (Matter of Guden, 171 N. Y. 529.) (1902.)

Appointment or election of officers, not provided for by this Constitution.— § 2. All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

[Section 2 of article X of the amended constitution of 1846, without change.]

The reservation to the electors, or local authorities to elect or appoint county, city, town and village officers relates only to such officers as existed at the time of the adoption of the constitution. (People ex rel. v. Draper, 15 N. Y. 532; People v. Pinckney, 32 id. 377; Fire Department v. Steamship Co., 106 id. 566.)

Firemen in cities and villages are not civil and public officers within the provisions of this section. (People v. Pinckney, 32 N. Y. 377.)

Office of commissioners of taxes in city of New York, comprised functions of office existing at the time of adoption of the

constitution and cannot be filled by appointment of the governor. (People v. Raymond, 37 N. Y. 428.)

This constitutional right of local self-government cannot be evaded by a change in the name of an office, nor can an office be divided and the duties assigned to two or more officers of different names. (People ex rel. v. Albertson, 55 N. Y. 50.)

Office of commissioner of records in city of New York does not supersede or interfere with that of register and is a new office. (People ex rel. v. Palmer, 52 N. Y. 83.)

Act of legislature extending terms of town collectors then in office, is an attempted exercise of the power of appointment and is unconstitutional. (People ex rel. v. McKinney, 52 N. Y. 374; People ex rel. v. Crooks, 53 id. 648.)

Act extending the jurisdiction of park commissioners of New York city over land in Westchester authorized to be acquired by it is not violative of this section. (Matter of Application of Mayor, etc., of New York, 99 N. Y. 569.)

Legislature can clothe officers appointed by it for the purpose of carrying out a public improvement with power to perform acts which at the time of the adoption of the constitution was vested in local officers elected by the people, if such acts had special relation to such improvement. (Astor v. Mayor, etc., 62 N. Y. 567. And see also Fire Department v. Steamship Co., 106 id. 566, 577.)

And so the legislature may provide for the widening of a street in a village by the appointment of commissioners. (People ex rel. v. McDonald, 69 N. Y. 362; Hanlon v. Supervisors, 57 Barb. 397.)

The provisions of this section include superintendents of the poor, and the legislature may direct that vacancies in such office be filled by boards of supervisors. (People ex rel. v. Comstock, 78 N. Y. 356; People ex rel. v. Clute, 50 id. 451, 459.)

The office of health officer of the port of New York is not a county or city officer, and the governor may appoint. (In Matter of Whiting, 2 Barb. 513.)

A commissioner of loans was a county officer at the time of the adoption of the constitution of 1846, and the governor cannot appoint. This does not refer to United States loan commissioners. (Matter of Carpenter, 7 Barb. 30.)

President pro tempore of board of supervisors is a county authority, and an act authorizing him to appoint commissioners is constitutional. (Matter of Carboy, 27 Hun, 82.)

An act creating a board of water commissioners is constitutional as creating new offices, the duties of which had not de-

volved upon other officers. (Hequembourg v. Dunkirk, 49 Hun, 550.)

Act vesting appointment of tax commissioners in city of New York upon governors was declared unconstitutional. (People v. Raymond, 37 N. Y. 428.)

An act providing for the appointment of pilot commissioners by the Chamber of Commerce and the presidents of the marine insurance companies is within the provisions of this section relating to the appointment of officers created by the legislature and is valid. (Sturgis v. Spofford, 45 N. Y. 446.)

An act directing that regulations of mayor for admission into the civil service of a city be submitted to the state board of civil service commissioners for their approval, does not interfere with the general powers of the local authorities to appoint. (Rogers v. Common Council of Buffalo, 123 N. Y. 173.)

Where a new town is created out of an old one, an act providing that the officers of the old shall act as the officers of the new town until the next election is constitutional. (People ex rel. v. Hayt, 7 Hun, 39.)

An act transferring power from one local board to another is not contrary to this section. (Matter of Lester, 21 Hun, 130.)

The provisions of this section relate to villages incorporated since the adoption of the constitution of 1846, and the part of an act naming village officers would be unconstitutional. (People v. Blake, 49 Barb. 9.)

Trustees of school districts are not "county, city, town or village" officers within the provisions of this section. (People ex rel. v. Bennett, 54 Barb. 480.)

The office of school commissioner is created by law, and made elective by the direction of the legislature according to the alternative provided by this section, and an act permitting women to vote for a person to fill such office is unconstitutional. (Matter of Gage, 141 N. Y. 112.)

The legislature cannot extend the term of a town officer after his election, since that would virtually be an appointment to the office during the term of such extension. (People ex rel. Le Roy v. Foley, 148 N. Y. 677.) (1896.)

Legislature has no power to elect a town officer, and an act extending the term of a highway commissioner cannot have the effect of extending the term of one already in office. (People ex rel. Lovett v. Randall, 151 N. Y. 497.) (1897.)

Laws 1896, chapter 427, the Albany police law, which provided for the appointment of a portion of the police commis-

sioners by a minority of the common council, and possibly by a single member, held unconstitutional; a minority of the common council not being a local authority within the meaning of the constitution. (Rathbone v. Wirth, 150 N. Y. 459.) (1896.)

A provision that not more than one of the police commissioners of a county shall be of the same political opinion on state and national politics, is not violative of this section. (Pearce v. Stephens, 18 App. Div. 101.) (1897.)

The election of a village president by trustees is not violative of this section. (People ex rel. Whitehall v. Sturges, 21 Misc. Rep. 605.) (1897.)

Laws 1896, chapter 424, extending terms of coroner chosen for two years, to four years, held unconstitutional. (Matter of Bruger, 21 Misc. Rep. 370.) (1897.)

An act providing that the members of the police force of the city of New York who were officers of the New Utrecht police force before its annexation shall be graded in the same rank as they then held and receive the same pay as officers of corresponding rank in the New York police force is unconstitutional. As a police officer by reason of his relation to the corporation and its power over him, notwithstanding the general character of his duties, is a city officer within the meaning of the constitution and cannot be appointed by legislative act. (People v. York, 35 App. Div. 300.) (1898.)

A provision of the civil service law requiring the person graded highest on the civil service list to be appointed deprives the local authorities of the power of appointment and is unconstitutional. (People v. Mosher, 163 N. Y. 32.) (1900.)

Special franchise tax law does not deprive local officers of constitutional rights nor deprive them of substantial powers. (Buffalo Gas Co. v. Volz, 31 Misc. Rep. 160.) (1900.)

An act naming commissioners to audit certain outstanding claims against the city of Syracuse held constitutional. (City of Syracuse v. Hubbard, 64 App. Div. 587.) (1901.)

Act providing for appointment of special courthouse building commission for Oneida county constitutional, the commissioners becoming the agents of the state for the purpose specified and not county officers within the contemplation of this section. (People v. Supervisors of Oneida County, 170 N. Y. 105.) (1902.)

Charter provision naming sewer, water and street commissioners for first year, unconstitutional. (Village of Saratoga v. Van Norder, 75 App. Div. 204.) (1902.)

Act empowering governor to remove police commissioner is constitutional since the power of appointment and not of re-

moval of local officers is subject to constitutional limitation. (People ex rel. Devery v. Coler, 71 App. Div. 584.) (1902.) (Affd., 173 N. Y. 103.) (1903.)

An act changing the tenure of the position of detective sergeant in New York police force from one existing during pleasure of police commissioner to one subject to same rules and regulations applicable to other positions in department and providing that the force of detective sergeants should consist of those holding that position on April 1, 1901, unconstitutional. (People ex rel. Lakey v. Partridge, 74 App. Div. 291.) (1902.) (People ex rel. Burns v. Partridge, 38 Misc. Rep. 697.) (1902.)

The commissioner of jurors in the county of Kings at the time of the adoption of the present constitution was a county officer and the statute authorizing his appointment by justices of the appellate division of second department unconstitutional. (Matter of Brenner, 170 N. Y. 185.) (1902.)

Statute authorizing appointment of commissioner of jurors in each county of the state having a population of a million or more by the justices of the appellate division held constitutional. (Matter of Allison, 172 N. Y. 421.) (1902.)

Acts authorizing state officials to construct public buildings, parks and highways, the expense of which was to be paid locally have been uniformly sustained, although the power to make such improvements had been previously vested in the local authorities, and it was urged that the transfer was an encroachment upon local self-government; but statutes which, directly or indirectly, authorized the appointment of local officers by state officials, or the legislature, or extended the terms of local officers already elected, or limited the power of local authorities in the appointment of local officers have been condemned as in manifest violation of home rule.

The function of assessing a special franchise is not local, has never been exercised by local officers and is not a function peculiar to localities. It is a new office with new functions adapted to property of a new kind and differing in principle from any ever dealt with by local assessors. Local self-government is untouched and there is no invasion of local functions. It does not violate the principle of home rule. (People ex rel. Met. Ry. Co. v. Tax Com'rs, 174 N. Y. 417.) (1903.)

The legislature has the power to regulate, increase or diminish the duties of a local officer, subject only to the limitation that no essential or exclusive function belonging to the officer can be transferred to an officer appointed by central authority. The office may go but the function must be exercised locally if at all. It is interference with the vital, intrinsic and insepar-

able function of the local office that the constitution prohibits. (People ex rel. Met. Ry. Co. v. Tax Com'rs. 174 N. Y. 417.) (1903.)

An act designating a person to fill a vacancy in a local office and extending term of present incumbent, unconstitutional. (Matter of Haase, 41 Misc. Rep. 114; affd., 88 App. Div. 242.) (1903.)

Provisions of New York charter continuing in office the policemen who had been assigned to duty as detective sergeants did not create new office but merely continued an old office with persons who at that time filled it under appointment from city officers and are constitutional. (Sugden v. Partridge, 174 N. Y. 87.) (1903.)

Duration of term.— § 3. When the duration of any office is not provided by this Constitution it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

[Section 3 of article X of the amended constitution of 1846, without change.]

When the duration is once declared by law the legislature cannot extend the term of the office so as to affect the present incumbent. (People ex rel. v. Bull, 46 N. Y. 57.)

Legislature may abridge the term of office either by express words or may specify an event upon the happening of which it shall end. (People ex rel. v. Whitlock, 92 N. Y. 191.)

When the power of appointment is conferred in general terms and without restriction the office is held only during the pleasure of the authority making the appointment. (People ex rel. v. Robb, 126 N. Y. 180.)

The provision that "such office shall be held during the pleasure of the authority making the appointment" applies only to an office that is continuous. (Bergen v. Powell, 94 N. Y. 591.)

The provision of this section that when the duration of an office is not declared by law, it shall be held during the pleasure of the authority making the appointment, relates only to the offices, the tenure of which continues and not to cases in which the power of appointment is exhausted when it is once exercised, or when the tenure is fixed by the statutes. (Jarvis v. Waterway, 84 Hun, 462.) (1895.)

Provision of second class city charter authorizing commissioner of public safety to remove policemen and that his decision shall be final and not reviewable, held constitutional; but such officer is entitled to have a substantial compliance with the statutory provisions as to trial and the power to remove cannot be exercised arbitrarily and without evidence to support it. (People v. Peck, 73 App. Div. 89.) (1902.)

The legislature may abridge the term of office or abolish an office created by an act of the legislature. Citing Coch v. Mayor, 152 N. Y. 72. (Matter of Lowman, 95 App. Div. 32.) (1904.)

The power of removal hereunder cannot be limited by any rules of the civil service commission. (People v. Henry, 47 App. Div. 133.) (1900.)

Time of election.— § 4. The time of electing all officers named in this article shall be prescribed by law.

[Section 4 of article X of the amended constitution of 1846, without change.]

Vacancies in offices, how filled.— § 5. The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

[Section 5 of article X of the amended constitution of 1846, without change.]

This section relates only to offices which are certain and fixed as elective offices, not of those which may become so by act of legislature, and therefore does not refer to superintendents of the poor. (People ex rel. v. Comstock, 78 N. Y. 356. And see also People ex rel. v. Townsend, 102 id. 430, 439.)

A construction of the provisions of this section is contained in People v. Keeler, 17 N. Y. 370.

A person appointed to fill a vacancy in the office of supervisor prior to the annual election in an even-numbered year holds only until the close of that political year, notwithstanding a provision in the city charter that persons appointed to fill

such vacancies shall hold until the end of an odd-numbered year. (People ex rel. Howard v. Supervisors of Erie, 42 App. Div. 510.) (1899.) (Affd., 160 N. Y. 687.) (1899.) (See People v. Scheu, 167 N. Y. 292.) (1901.)

This section applies only to constitutional officers as distinguished from those created by the legislature. (People v. Scheu, 167 N. Y. 292.) (1901.)

No valid appointment can be made except in case of a vacancy occurring otherwise than by expiration of the term. (People v. Dooley, 171 N. Y. 74.) (1902.)

Political year.— § 6. The political year and legislative term shall begin on the first day of January; and the Legislature shall, every year, assemble on the first Wednesday in January.

[Section 6 of article X of the amended constitution of 1846, amended. The time of the assembling of the legislature is changed and made absolute.]

(For interpretation of this section, see People v. Supervisors of Monroe County, 65 Hun, 263, 281.)

Removal from office for misconduct, etc.— § 7. Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.

[Section 7 of article X of the amended constitution of 1846, without change.]

Office deemed vacant.— § 8. The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this constitution.

[Section 8 of article X of the amended constitution of 1846, without change.]

Compensation of officers.— § 9. No officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other State officers named in the Constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

[Section 9 of article X of the amended constitution of 1846, without change.]

As to the meaning of word compensation as distinguished from "allowances." (Mangam v. City of Brooklyn, 98 N. Y. 585, 593.)

Compensation of statutory officers not protected by constitution may be increased or decreased by the legislature. (Matter of Mayor, etc., of N. Y., 33 App. Div. 365.) (1898.)

ARTICLE XI.

State militia.— Section 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject however, to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the Legislature of this State.

[Section 1 of article XI of the amended constitution of 1846, amended.]

Enlistment.— § 2. The Legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

[This provision is not contained in the amended constitution of 1846, although this power was impliedly granted therein.]

Organization of militia.— § 3. The militia shall be organized and divided into such land and naval, and active and reserve forces as the Legislature may deem proper, provided however that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the Legislature at each session to make sufficient appropriation for the maintenance thereof.

[New in terms.]

Courts-martial are necessary incidents to the "discipine" of the state militia. (People ex rel. v. Daniell, 50 N. Y. 274.)

The provision of a law making the wages of armorers and janitors of armories a county charge, does not violate this section. (Yoedel v. Palmer, 5 App. Div. 86 (1897); Bryant v. Palmer, 152 N. Y. 412.) (1897.)

Appointment of military officers by the Governor. — § 4. The Governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate, and with the consent of the Senate appoint, all major-generals.

[The substance of this section is contained in section 3 of article XI of the amended constitution of 1846. A portion of such section is omitted.]

The governor has no power during the recess of the senate to appoint a major-general of the national guard to fill a vacancy. (People v. Molyneux, 40 N. Y. 113.)

Manner of election of military officers prescribed by Legislature.— § 5. All other commissioned and

non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

[This section is a substitute for sections 4 and 6 of article XI of the amended constitution of 1846.]

Commissioned officers; their removal.— § 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.

[Section 5 of article XI of the amended constitution of 1846, amended. The principal change is the removal of commissioned officers upon the findings of an examining board or for absence without leave.]

A commissioned officer, rendered supernumerary by the disbandment of a military company, pursuant to Military Code, is not removed from office within the meaning of this section. (People ex rel. v. Hill, 126 N. Y. 497; People ex rel. v. Ewen, 17 How. Pr. 375.)

ARTICLE XII.

Organization of cities and villages.— Section 1. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations; and the Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town, village or other civil divison of the State, or by any contractor or subcontractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof.

Classification of cities; general and special city laws; special city laws; how passed by Legislature and acceptance by cities.— § 2. All cities are classified according to the latest State enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. Laws relating to the property, affairs of government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more

classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legis-

lature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

[New.]

L. 1896, chap. 141, relating to special tax of foreign insurance companies in Long Island City, is a special city law. (See case for consideration of subject. Exempt Fireman Ass'n v. Trustees, 34 App. Div. 138.) (1898.)

The liquor tax law held not to be a city law. (People ex rel. Einsfeld v. Murray, 149 N. Y. 367.) (1896.)

A statute to enable an executrix to sue on a claim against the city of New York barred by the statute of limitations is a special city law and must be transmitted to the mayor. (Chrystal v. Mayor of New York, 63 App. Div. 93.) (1901.)

The provision requiring special city laws to be submitted to local authorities for action was designed to secure municipal independence as to purely city matters which do not interest the community outside and which might properly come within the jurisdiction of the local legislative power such as: 1. Streets and highways. 2. Parks and public places. 3. Sewers and waterworks. 4. Character and structure of buildings as to safety and security and apparatus and means for preventing and extinguishing fires. 5. Salaries of city officers and employees. 6. Ward boundaries. 7. Taxes and assessments. 8. Organization and membership of common council. 9. Powers and duties of common council and city officers as to the subjects hereinbefore enumerated. It was never intended to interfere with the sovereign power of the state to provide for the economical administration of a county office nor to prevent the imposing of a duty upon an officer of the municipality relating to the sovereign power of the state rather than the municipality. (McGrath v. Grout, 69 App. Div. 314.) (1902.)

Law providing for salaries of sheriff, register and county clerk of Kings county is not a special city bill. (McGrath v. Grout, 171 N. Y. 7.) (1902.)

Election of city officers, when to be held; extension and abridgment of terms.— § 3. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and ninety-five, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections, of any judicial officer, except judges and justices of inferior local courts.

[New.]

This section does not save the office of justice of the peace of Brooklyn from abridgment. (Murphy v. Snitzpan, 15 Misc. Rep. 496.)

As to supervisors appointed to fill vacancies in even-numbered year. (People ex rel. Howard v. Wende, 53 N. Y. Supp. 1039.)

ARTICLE XIII.

Oath of office.— Section 1. Members of the Legislature, and all officers executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money, or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust.

[Section 1 of article XII of the amended constitution of 1846, without change.]

A statute which requires an applicant for appointment to position in a public office to show his fitness therefor is not

an illegal test within the meaning of the provision of this section. (Rogers v. Common Council of City of Buffalo, 123 N. Y. 173.)

The excise commissioners' test oath required by section 3 of chapter 163 of the Laws of 1890 is repugnant to this section. (People ex rel. v. Palen, 74 Hun, 289.)

Provision of Penal Code providing for forfeiture of office upon failure to file statement of election expenses repugnant to this section. (Stryker v. Churchill, 39 Misc. Rep. 578.) (1903.)

Official bribery and corruption.— § 2. Any person holding office under the laws of this State who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, anything of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

[Section 1 of article XV of the amended constitution of 1846, without change.]

A subordinate in the district attorney's office of New York, is a public officer, within the constitutional prohibition against extra compensation. (Merzbach v. Mayor, 19 App. Div. 186.) (1897.)

Offer or promise to bribe.— § 3. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testi-

fying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be guilty of an attempt to bribe, which is hereby declared to be a felony.

[Section 2 of article XV of the amended constitution of 1846, without change.]

Person bribed or offering a bribe may be a witness.— § 4. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

[Section 3 of article XV of the amended constitution of 1846, without change.]

Free passes, franking privileges, etc., not to be received by public officers; penalty.— § 5. No public officer, or person elected or appointed to a public office, under the laws of this State, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the Attorney-General. Any corporation, or officer or agent thereof,

who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person, or officer or agent of a corporation, giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

[New.]

A notary public is a public officer. (People v. Rathbone, 145 N. Y. 434.) (1895.) A railroad commissioner is included in the inhibition, but he may use a pass issued by the secretary of state under L. 1882, chap. 353, § 169. (Matter of Bd. of R. R. Commissioners, 11 Misc. Rep. 103.) A railroad policeman appointed under section 58 of the railroad law, is a public officer. (Dempsey v. N. Y. Central R. R. Co., 146 N. Y. 290.) (1895.)

A public officer is prohibited from accepting a palace or sleeping-car pass. (People v. Wadhams, 176 N. Y. 9.) (1903.)

Removal of district attorney for failure to prosecute; expenses of prosecutions for bribery.— § 6. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the Governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this State within such

county, or of receiving bribes by any such person in said county, shall be a charge against the State, and their payment by the State shall be provided for by law.

[Section 4 of article XV of the amended constitution of 1846, without change.]

This section only refers to investigations in bribery proceedings, and an act providing that all the costs and expenses of an investigation of charges against a county officer be borne by the county is not contrary thereto. (People ex rel. v. Supervisors, 39 Hun, 442.)

ARTICLE XIV.

Amendments to Constitution, how proposed, voted upon and ratified.— Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as foresaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments

shall become a part of the Constitution from and after the first day of January next after such approval.

[Section 1 of article XIII of the amended constitution of 1846, amended.]

Future constitutional conventions; how called; election of delegates; compensation; quorum; submission of amendments; officers; rules; vacancies; taking effect.— § 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for services the same compensation and the same mileage as shall then be annually payable to the members of the Assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected

to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.

[The part of this section relating to the calling of future conventions is substantially the same as section 2 of article XIII of the amended constitution of 1846. The remainder of the section is new.]

Amendments of convention and Legislature submitted coincidently.— § 3. Any amendment proposed by a constitutional convention relating to the

same subject as an amendment proposed by the Legislature, coincidently submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the legislature.

[New.]

ARTICLE XV.

Time of taking effect.— Section 1. This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided.

Done in Convention at the Capitol in the city of Albany, the twenty-ninth day of September, in the year one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

In witness whereof, we have hereunto subscribed our names.

JOSEPH HODGES CHOATE,
President and Delegate-at-Large.

CHARLES ELLIOT FITCH,
Secretary.

Schedule Showing Sources of Sections of the New York State Constitution of 1894.

Constitution of 1894.		Constitution of 1846, amended.	
Art. I, § 1.....		Art. I, § 1.	
I, 2.....		I, 2.	
I, 3.....		I, 3.	
I, 4.....		I, 4.	
I, 5.....		I, 5.	
I, 6.....		I, 6.	
I, 7.....		I, 7, amended.	
I, 8.....		I, 8.	
I, 9.....		I, 10, amended.	
I, 10.....		I, 11.	
I, 11.....		I, 12.	
I, 12.....		I, 13.	
I, 13.....		I, 14.	
I, 14.....		I, 15.	
I, 15.....		I, 16.	
I, 16.....		I, 17, amended.	
I, 17.....		I, 18.	
I, 18.....	New.		
II, 1.....	Art.	II, 1, amended.	
II, 2.....		II, 2, amended in language.	
II, 3.....		II, 3, amended.	
II, 4.....		II, 4, amended.	
II, 5.....		II, 5, amended.	
II, 6.....	New.		
III, 1.....	Art.	III, 1.	
III, 2.....	New.	Superseding art. III, § 2.	
III, 3.....	New.	" III, 3.	
III, 4.....	New.	" III, 4.	
III, 5.....	New.	" III, 5.	
III, 6.....	Art.	III, 6.	
III, 7.....		III, 7.	
III, 8.....		III, 8.	
III, 9.....		III, 9.	
III, 10.....		III, 10, amended.	
III, 11.....		III, 11.	
III, 12.....		III, 12.	
III, 13.....		III, 13.	
III, 14.....		III, 14.	
III, 15.....		III, 15, amended.	
III, 16.....		III, 16.	
III, 17.....		III, 17.	
III, 18.....		III, 18, amended in language.	
III, 19.....		III, 19.	
III, 20.....		I, 9.	
III, 21.....		VII, 8.	

Constitution of 1894.		Constitution of 1846, amended.	
Art. III, 22.....	New.		
III, 23.....	Art.	III, 25.	
III, 24.....		III, 20.	
III, 25.....		III, 21.	
III, 26.....		III, 22.	
III, 27.....		III, 23.	
III, 28.....		III, 24.	
III, 29.....	New.		
IV, 1.....	Art.	IV, 1, amended.	
IV, 2.....		IV, 2.	
IV, 3.....		IV, 3.	
IV, 4.....		IV, 4.	
IV, 5.....		IV, 5.	
IV, 6.....		IV, 6.	
IV, 7.....		IV, 7, amended.	
IV, 8.....		IV, 8.	
IV, 9.....		IV, 9.	
V, 1.....		V, 1, amended.	
V, 2.....	New.		
V, 3.....	Art.	V, 3, amended in language.	
V, 4.....		V, 4, amended in language.	
V, 5.....		V, 5, amended in language.	
V, 6.....		V, 6.	
V, 7.....		V, 7.	
V, 8.....		V, 8.	
V, 9.....	New.		
VI, 1.....	Partly new, superseding art. VI, § 6.		
VI, 2.....	Mostly new, s'persed'g art. VI, §§ 7 and 28.		
VI, 3.....	Art.	VI, § 8, amended.	
VI, 4.....		VI, § 9, amended.	
VI, 5.....	New.	Repealing art. VI, § 12.	
VI, 6.....	New.		
VI, 7.....	Art.	VI, § 2, amended.	
VI, 8.....		VI, 3, amended.	
VI, 9.....	New.		
VI, 10.....	Art.	VI, § 10.	
VI, 11.....		VI, 11, amended.	
VI, 12.....	Partly new, s'persed'g art. VI, §§ 13 and 14		
VI, 13.....	Art.	VI, § 1.	
VI, 14.....		VI, 15, amended.	
VI, 15.....	Partly new, and see art. VI, § 15.		
VI, 16.....	Art.	VI, § 16, amended.	
VI, 17.....		VI, 18, amended.	
VI, 18.....		VI, 19, amended.	
VI, 19.....		VI, 20, amended.	
VI, 20.....	Partly new, superseding art. VI, § 21.		
VI, 21.....	Art.	VI, § 23, amended	
VI, 22.....		VI, 25, amended.	
VI, 23.....		VI, 26.	
VII, 1.....		VII, 9.	
VII, 2.....		VII, 19.	

Constitution of 1894.			Constitution of 1846, amended.	
Art. VII,	3.....		VII,	11.
VII,	4.....		VII,	12, amended in language.
VII,	5.....		VII,	13.
VII,	6.....		VII,	14, amended.
VII,	7.....	New.		
VII,	8.....	Art.	VII,	6, amended.
VII,	9.....		VII,	3, amended.
VII,	10.....	New.		
VIII,	1.....	Art.	VIII,	1.
VIII,	2.....		VIII,	2.
VIII,	3.....		VIII,	3.
VIII,	4.....		VIII,	4.
VIII,	5.....		VIII,	5.
VIII,	6.....		VIII,	6.
VIII,	7.....		VIII,	7, amended.
VIII,	8.....		VIII,	8.
VIII,	9.....		VIII,	10.
VIII,	10.....		VIII,	11, amended.
VIII,	11–15...	New.		
IX,	1.....	New.		
IX,	2.....	New.		
IX,	3.....	Art.	IX,	1.
IX,	4.....	New.		
X,	1.....	Art.	X,	1, amended.
X,	2.....		X,	2.
X,	3.....		X,	3.
X,	4.....		X,	4.
X,	5.....		X,	5.
X,	6.....		X,	6, amended.
X,	7.....		X,	7.
X,	8.....		X,	8.
X,	9.....		X,	9.
XI,	1.....		XI,	1, amended.
XI,	1.....		XI,	2, amended.
XI,	3.....		XI,	3, amended.
XI,	4.....		XI,	4, amended.
XI,	5.....		XI,	5, amended.
XI,	6.....		XI,	6, amended.
XII,	1.....		VIII,	9.
XII,	2.....	New.		
XII,	3.....	New.		
XIII,	1.....	Art.	XII,	1.
XIII,	2.....		XV,	1.
XIII,	3.....		XV,	2.
XIII,	4.....		XV,	3.
XIII,	5.....	New.		
XIII,	6.....	Art.	XV,	4.
XIV,	1.....		XIII,	1, amended.
XIV,	2.....		XIII,	2, amended.
XIV,	3.....	New.		
XV,	1.....	Art.	XIV,	13.

Schedule Showing Disposition of Sections of the New York State Constitution of , Amended

Constitution of 1846, amended.			Constitution of 1894.	
Art.	I, § 1	Re-enacted in	Art. I,	§ 1
	I, 2	"	I,	2.
	I, 3	"	I,	3.
	I, 4	"	I,	4.
	I, 5	"	I,	5.
	I, 6	"	I,	6.
	I, 7	Amended by	I,	7.
	I, 8	Re-enacted in	I,	8.
	I, 9	"	III,	20.
	I, 10	Amended by	I,	9.
	I, 11	Re-enacted in	I,	10.
	I, 12	"	I,	11.
	I, 13	"	I,	12.
	I, 14	"	I,	13.
	I, 15	"	I,	14.
	I, 16	"	I,	15.
	I, 17	Amended by	I,	16.
	I, 18	Re-enacted in	I,	17.
	II, 1	Amended by	II,	1.
	II, 2	"	II,	2.
	II, 3	"	II,	3.
	II, 4	"	II,	4.
	II, 5	"	II,	5.
	III, 1	Re-enacted in	III,	1.
	III, 2	Superseded by	III,	2.
	III, 3	"	III,	3.
	III, 4	"	III,	4.
	III, 5	"	III,	5.
	III, 6	Re-enacted in	III,	6.
	III, 7	"	III,	7.
	III, 8	"	III,	8.
	III, 9	"	III,	9.
	III, 10	Amended by	III,	10.
	III, 11	Re-enacted in	III,	11.
	III, 12	"	III,	12.
	III, 13	"	III,	13.
	III, 14	"	III,	14.
	III, 15	Amended by	III,	15.
	III, 16	Re-enacted in	III,	16.
	III, 17	"	III,	17.
	III, 18	Amended by	III,	18.
	III, 19	Re-enacted in	III,	19.
	III, 20	"	III,	24.
	III, 21	"	III,	25.
	III, 22	"	III,	26.

Constitution of 1846, amended.			Constitution of 1894.	
Art. III,	23.....	Re-enacted in Art.	III,	27.
III,	24.....	"	III,	28.
III,	25.....	"	III,	23.
IV,	1.....	Amended by	IV,	1.
IV,	2.....	Re-enacted in	IV,	2.
IV,	3.....	"	IV,	3.
IV,	4.....	"	IV,	4.
IV,	5.....	"	IV,	5.
IV,	6.....	"	IV,	6.
IV,	7.....	Amended by	IV,	7.
IV,	8.....	Re-enacted in	IV,	8.
IV,	9.....	"	IV,	9.
V,	1.....	Amended by	V,	1.
V,	2.....	"	V,	1, 2.
V,	3.....	Amended in language,	Art. V,	§ 3.
V,	4.....	" "	Art. V,	§ 4.
V,	5.....	" "	Art. V,	§ 5.
V,	6.....	Re-enacted in Art.	V,	§ 6.
V,	7.....	"	V,	7.
V,	8.....	"	V,	8.
VI,	1.....	"	VI,	13.
VI,	2.....	Amended by	VI,	7.
VI,	3.....	"	VI,	8.
VI,	4.....	(Causes referred to commissioners of appeals.) Abrogated.		
VI,	5.....	(Commissioners of appeals.)	Abrogated.	
VI,	6.....	Superseded by Art.	VI,	§ 1.
VI,	7.....	"	VI,	2.
VI,	8.....	Amended by	VI,	3.
VI,	9.....	"	VI,	4.
VI,	10.....	Re enacted in	VI,	10.
VI,	11.....	Amended by	VI,	11.
VI,	12.....	(City courts) repealed by Art. VI, § 5.		
VI,	13.....	Superseded by Art.	VI,	§12.
VI,	14.....	"	VI,	12.
VI,	15.....	Amended by	VI,	14.
VI,	16.....	"	VI,	16.
VI,	17.....	(Question of election or appointment of judges.) Abrogated.		
VI,	18.....	Amended by Art.	VI,	§ 17.
VI,	19.....	"	VI,	18.
VI,	20.....	"	VI,	19.
VI,	21.....	Superseded by	VI,	20.
VI,	22.....	"	VI,	9.
VI,	23.....	Amended by	VI,	21.
VI,	24.....	(First election of judges.)	Abrogated.	
VI,	25.....	Amended by Art.	VI,	§ 22.
VI,	26.....	Re-enacted in	VI,	23.
VII,	1.....	(Canal debt, etc.)	Abrogated.	
VII,	2.....	(General fund debt, etc.)	Abrogated.	

Constitution of 1846, amended.			Constitution of 1894.	
Art. VII,	3.....	Amended by Art.	VII,	§ 9.
VII,	4.....	(Loans to incorporated companies.) Abrogated.		
VII,	5.....	(Provisions for payment of canal debt.) Abrogated.		
VII,	6.....	Re-enacted in Art.	VII,	§ 8.
VII,	7.....	(Salt Springs.) Abrogated.		
VII,	8.....	Re-enacted in Art.	III,	§21.
VII,	9.....	"	VII,	1.
VII,	10.....	"	VII,	2.
VII,	11.....	"	VII,	3.
VII,	12.....	Amended in language Art.	8,	§ 4.
VII,	13.....	Re-enacted in Art.	VII,	§ 5.
VII,	14.....	Amended by	VII,	6.
VIII,	1.....	Re-enacted in	VIII,	1.
VIII,	2.....	"	VIII,	2.
VIII,	3.....	"	VIII,	3.
VIII,	4.....	"	VIII,	4.
VIII,	5.....	"	VIII,	5.
VIII,	6.....	"	VIII,	6.
VIII,	7.....	Amended by	VIII,	7.
VIII,	8.....	Re-enacted in	VIII,	8.
VIII,	9.....	"	XII,	1.
VIII,	10.....	"	VIII,	9.
VIII,	11.....	"	VIII,	10.
IX,	1.....	"	IX,	3.
X,	1.....	Amended by	X,	1.
X,	2.....	Re-enacted in	X,	2.
X,	3.....	"	X,	3.
X,	4.....	"	X,	4.
X,	5.....	"	X,	5.
X,	6.....	Amended by	X,	6.
X,	7.....	Re-enacted in	X,	7.
X,	8.....	"	X,	8.
X,	9.....	"	X,	9.
XI,	1.....	Superseded by	XI,	1.
XI,	2.....	"	XI,	5.
XI,	3.....	Amended by	XI,	4.
XI,	4.....	"	XI,	5.
XI,	5.....	"	XI,	6.
XI,	6.....	Superseded by	XI,	5.
XII,	1.....	Re-enacted in	XIII,	1.
XIII,	1.....	Amended by	XIV,	1.
XIII,	2.....	"	XIV,	2.
XIV,	1.....	(First election of senators, etc.) Abrogated.		
XIV,	2.....	(First election of governor and lieutenant-governor.) Abrogated.		
XIV,	3.....	(State officers to remain in office.) Abrog'd.		
XIV,	4.....	(First election of judges, etc.) Abrogated.		
XIV,	5.....	(Pending suits.) Abrogated.		

Constitution of 1846, amended.		Constitution of 1894		
Art. XIV,	6.....	(Masters in chancery.) Abrogated.		
XIV,	7.....	(Vacancy in office of chancellor.) Abrogated.		
XIV,	8.....	(Offices abolished.) Abrogated.		
XIV,	9.....	(Chancellors and justices eligible.) Abrogated.		
XIV,	10.....	(Expiration of term.) Abrogated.		
XIV,	11.....	(Judicial officers may take fees.) Abrogated.		
XIV,	12.....	(Local courts.) Abrogated.		
XIV,	13.....	Amended by Art.	XV,	1.
XV,	1.....	Re-enacted in	XIII,	2.
XV,	2.....	"	XIII,	3.
XV,	3.....	"	XIII,	4.
XV,	4.....	"	XIII,	6.

INDEX TO THE CONSTITUTION OF THE STATE OF NEW YORK,

AS IN FORCE JANUARY 1, 1909.

	Art.	Sec.	Page.
Academies:			
support of	9	3	294
Actions:			
rights of party, in criminal	1	6	132
to recover damages for death, not to be abrogated	1	18	166
amount recoverable in. for death, not limited	1	18	166
Adjournment:			
neither house to adjourn without consent of other	3	11.	201
Agricultural land:			
general laws may authorize owners to construct drains, etc., on lands of others	1	7	156
lease of, for longer than twelve years, void, when	1	13	163
Alienation of lands:			
restraints on, to be void	1	14	164
Allodial:			
lands of State are	1	12	162
Amendments:			
to constitution, manner of proposing, by legislature	14	1	316
conventions to propose	14	2	317
effect, when amendments relating to same subject, proposed by legislature and convention, are coincidently adopted	14	3	318
Appeals, court of. (See Court of appeals.)			
Apportionment:			
subject to review by courts	3	5	194
Appropriation laws:			
to be for two years	3	21	223
shall distinctly specify sum and object	3	21	223
not to contain "riders"	3	22	224

	Art.	Sec.	Page.
Appropriation laws — (Continued).			
governor may veto items in	4	9	234
bills, how passed	3	25	225
Assembly:			
of what to consist	3	2	184
members, terms	3	2	184
how chosen	3	5	194
when and how to be apportioned	3	5	194
each county to have one	3	5	194
Hamilton and Fulton to have but one	3	5	194
ratio of apportionment	3	5	194
apportionment of	3	5	194
compensation of	3	6	199
civil appointments of, void	3	7, 8	199
when speaker of, to act as governor	4	7	233
has power of impeachment	6	13	259
to judge of qualifications	3	10	201
to choose its own officers	3	10	201
to keep journal and publish same	3	11	201
to sit with open doors, except, etc	3	11	201
not to adjourn without consent of senate	3	11	201
members not to be questioned elsewhere for speech or debate	3	12	201
majority of, necessary to pass bills	3	15	202
(See Legislature.)			
Attorney-general:			
when chosen	5	1	236
term of, to be two years	5	1, 2	236
compensation of, not to be increased or diminished	5	1	236
not to receive fees to own use	5	1	236
term of, elected in 1895, to be three years	5	2	236
to be commissioner of land office, of canal fund, and member of canal board	5	5	240
Attorney, district. (See District attorney.)			
Ayes and noes:			
necessary on passage of bills	3	15	202
on tax and appropriation bills	3	25	225
to be taken, on removal of judicial officers	6	11	257
to be taken on bill creating debt	7	4	270
on bills returned by governor, with objections	4	9	234
Bail:			
excessive, not to be required	1	5	131
Ballot:			
elections to be by, except for town officers, or where legislature prescribes other secret method	2	5	171

Banking:	Art.	Sec.	Page.
Legislature not to pass special acts for	8	4	281
corporations may be formed for, under general laws	8	4	281
individual liability of stockholders	8	7	283
billholders of institution for, to be preferred	8	8	283
suspension of specie payments not sanctioned	8	5	282
Bank notes:			
to be registered	8	6	282
to be preferred in cases of insolvency	8	8	283
Betting:			
on elections, persons excluded from voting	2	2	169
Bills:			
may originate or be amended in either house	3	13	202
enacting clause of	3	14	202
to be on desks three days before passage	3	15	202
majority vote necessary to passage	3	15	202
not to be amended on final passage	3	15	202
vote on, to be by yeas and nays	3	15	202
private or local, to embrace but one subject, expressed in title	3	16	203
not to enact existing law, without inserting it	3	17	213
private or local bills, certain, prohibited,	3	18	214
certain provisions not to apply to bills reported by commissioners	3	23	224
passage after veto by governor	4	9	234
when becomes law without his signature.	4	9	234
thirty days bills must be approved	4	9	234
creating debt, ayes and noes necessary,	7	4	270
issued as money, legislature to provide for registry of	8	6	282
relating to cities, manner of passage of,	12	2	308
for tax and appropriations, three-fifths quorum	3	25	225
Black River canal, not to be sold, etc	7	8	274
Board of supervisors. (See Supervisors.)			
Bookmaking:			
prohibited	1	9	160
Borrowing money:			
state may borrow for casual deficit and,	7	2	269
to repel invasion, etc	7	3	270
otherwise only with assent of people	7	4	270
restrictions on municipalities	8	10	284
Bribery:			
to disfranchise	2	2	169
acceptance of bribe by public officers, felony	13	9	313

	Art.	Sec.	Page.
Bribery — Continued.			
of public officers	13	3	313
person charged with offering or receiving bribe may testify in his own behalf	13	4	314
acceptance or use of passes or franking privilege prohibited	13	5	314
expenses of prosecution for, chargeable to state	13	6	315
Bridges:			
except over certain waters, to be built under general laws	3	18	214
Brooklyn city court:			
abolished after 1895	6	5	250
jurisdiction transferred to supreme court.	6	2, 5	246, 250
judges of, to become justices of supreme court	6	5	250
disposition of record of	6	5	250
appeals from	6	5	250
Buffalo superior court:			
abolished after 1895	6	5	250
jurisdiction transferred to supreme court.	6	2, 5	246, 250
judges of, to become justices of supreme court	6	5	250
disposition of records of	6	5	250
appeals from	6	5	250
Canal board:			
of whom to consist	5	5	240
powers and duties of	5	6	240
not to allow claim barred by time	7	6	272
may cancel contract	7	9	275
Canal fund commissioners. (See Commissioners of canal fund.)			
Canals:			
legislature not to sell certain canals	7	8	274
but may sell Main and Hamburg street canal in Buffalo	7	8	274
funds derived from sale of, to be applied to improvement of	7	8	274
no tolls on	7	9	275
to be supported by state	7	9	275
contracts for work on	7	9	275
contractors may be relieved from onerous contracts	7	9	275
may be improved in manner provided by legislature	7	10	276
debts may be contracted for improvement of	7	10	276
or tax may be levied	7	10	276
Census:			
when to be taken	3	4	192

	Art.	Sec.	Page.
Circuit courts:			
abolished after 1895	6	6	252
actions, etc., in, to be transferred to supreme court	6	6	252
Cities:			
credit of, not to be loaned	8	10	284
limitations of indebtedness	8	10	284
may provide for orphan asylums, etc	8	14	291
payments by, to eleemosynary, etc., institutions may be authorized	8	14	291
credit or money not to be loaned to denominational institutions	9	4	294
officers of, not provided by constitution, how chosen	10	2	297
legislature to provide for organization of	12	1	308
legislature to restrict power of taxation, etc	12	1	308
classification of	12	2	308
laws relative to, general and special	12	2	308
special city laws to be sent to mayor,	12	2	308
to be acted on by city authorities	12	2	308
special provisions as to bills relative to	12	2	308
election of officers, where to be held	12	3	311
terms of office of officers of	12	3	311
terms of officers in office Jan. 1, 1895	12	3	311
Citizens:			
not to be disfranchised or deprived of rights or privileges, save by law of land	1	1	123
may freely express opinions	1	8	159
not to be twice put in jeopardy	1	6	132
Civil service:			
appointments in, to be according to fitness	5	9	241
soldiers and sailors to be preferred	5	9	241
Claims:			
barred by lapse of time, not to be audited or allowed	7	6	272
effect of legal disability on	7	6	272
Convicts:			
to be employed	3	29	228
Criminal cases:			
no one to be witness against himself	1	6	132
Clerk of inferior court:			
how removed	6	17	263
Clerk of court of appeals:			
office to be at Albany	6	19	267
to be appointed by court	6	7	252
Clerk of supreme court:			
county clerk to be	6	19	267
Clerks of counties. (See County clerk.)			
Clerks and registers of New York city:			
term of	10	1	293

Clerks — (Continued.)	Art.	Sec.	Page.
removable by governor	10	1	295
vacancy, how filled	10	5	303
(See Officers; Office.)			
Colonial laws:			
what, are laws of this state	1	16	165
Commissioners:			
certain provisions not to apply to bills reported by	3	23	224
Commissioners of canal fund:			
who are	5	5	240
powers and duties of	5	6	240
Commissioners of land office:			
who are	5	5	240
powers and duties of	5	6	240
Commissary-general. (See Militia.)			
Common law:			
part of law of this state	1	16	165
Common pleas:			
abolished after 1895	6	5	250
jurisdiction transferred to supreme court	6	2, 5	246, 250
judges of, to become judges of supreme court	6	5	250
disposition of records of	6	5	250
appeals from	6	5	250
Common school fund:			
capital of, to remain inviolate	9	3	294
revenue to be applied to support of common schools	9	3	294
of what to consist	9	3	294
Common schools:			
legislature to provide for	9	1	293
support of	9	3	294
Compensation. (See titles of respective officers.)			
Comptroller:			
when chosen	5	1	236
term of, to be two years	5	1, 2	236
compensation not to be increased or diminished	5	1	236
not to receive fees for own use	5	1	236
term of, elected in 1895, to be three years	5	2	236
to be commissioner of land office, commissioner of canal fund, and member of canal board	5	5	240
to appoint clerks of prisons	5	4	239
Congress:			
persons elected to, ineligible to legislature	3	8	200
Conscience:			
liberty of, not to justify licentiousness,	1	3	130

Constitution:	Art.	Sec.	Page.
amendments to, proposed by legislature.	14	1	316
convention to revise and amend	14	2	317
amendments to, on same subject, coincidently adopted	14	3	318
when in force	15	1	319
Contractors:			
no extra compensation to	7	9	275
	3	28	227
Convention to revise constitution:			
when to be held, etc	14	2	317
Coroners. (Not referred to in constitution.)			
Corporations:			
exclusive rights granted to, to be by general laws	3	18	214
may be formed under general laws	8	1	278
and by special act, when legislature deems necessary	8	1	278
dues from, to be secured by individual liability	8	2	280
what term includes	8	3	280
to have right to sue and be sued	8	3	280
savings banks' charters to be uniform	8	4	281
may be formed for banking purposes under general laws	8	4	281
issuing bank notes, not to suspend specie payments	8	5	282
individual liability of stockholders of banking	8	7	283
billholders of banking, to be preferred	8	8	283
not to furnish passes or free transportation of public officers	13	5	314
(See Banking; Savings banks.)			
County clerks:			
to be clerks of supreme court	6	19	267
terms of	10	1	295
removable by governor	10	1	295
vacancies, how filled	10	5	303
County courts:			
continued	6	14	260
jurisdiction	6	14	260
legislature may enlarge or restrict jurisdiction	6	14	260
vested with jurisdiction of courts of sessions	6	14	260
jurisdiction of, may be conferred on inferior courts	6	18	265
County judge:			
terms of	6	14	260
duties	6	14	260
salary to be established	6	14	260
may hold courts in other counties	6	14	260

County judge — (Continued).	Art.	Sec.	Page.
to act as surrogate, except where separate surrogate	6	15	261
age limitation	6	15	261
vacancies	6	15	261
compensation of, not to be increased or diminished	6	15	261
local officers may be provided to act as	6	16	263
not to practice in counties of over 120,000	6	19	267
except in Hamilton county, to be attorney	6	20	267
County:			
not to be divided in forming senate district	3	4	192
change of county seat, to be by general law	3	18	214
loan of credit of, prohibited	8	10	282
limitations on incurring indebtedness	8	10	284
may provide for orphan asylums, etc	8	14	291
payments by, to eleemosynary and reformatory institutions may be authorized	8	14	291
credit or money not to be granted to denominational institutions	9	4	294
officers of, whose election or appointment is not provided by constitution, how chosen	10	2	297
(See Supervisors.)			
Court of appeals:			
continued	6	7	252
of whom to consist	6	7	252
quorum of	6	7	252
reporter, clerk, attendants	6	7	252
jurisdiction not to be suspended, if there is a quorum of judges in office	6	8	253
vacancies in	6	8	253
jurisdiction of	6	9	254
appeals to	6	9	254
legislature may restrict jurisdiction of	6	9	254
clerk of, to have office at Albany	6	19	267
clerk of, to receive compensation fixed by law	6	19	267
(See Judges of court of appeals.)			
Court of common pleas. (See Common pleas.)			
Court of oyer and terminer:			
abolished after 1895	6	6	252
Court of sessions:			
abolished after 1895	6	14	260
jurisdiction transferred to county court,	6	14	260

	Art.	Sec.	Page.
Court of special sessions:			
to have such jurisdiction of misdemeanors as legislature may confer	6	23	269
Credit of state:			
not to be loaned to individuals, corporations or associations	7	1	269
	8	9	283
but may be in certain cases for deaf, dumb, etc	8	9	283
Crime:			
infamous, indictment necessary	1	6	132
Death:			
no limitation of amount recoverable in action to recover damages for	1	18	166
Debate:			
members of legislature not to be questioned for	3	12	201
Debt:			
state may contract, to meet casual deficit	7	2	269
state may contract, to repel invasions, etc	7	3	270
if contracted by state, to be authorized by law for a distinct object	7	4	270
law contracting, to be submitted to people	7	4	270
ayes and noes to be taken on bill creating,	7	4	270
legislature may repeal law	7	4	270
tax for debt incurred, not repealable	7	4	270
act to be submitted to people after three months	7	4	270
but not a general election	7	4	270
sinking funds for, not to be impaired	7	5	272
may be contracted for canals	7	10	276
(See Cities, yillages, towns, counties.)			
Debts:			
obligations of, not to be impaired	1	17	166
Decisions:			
legislature to provide for speedy publication of	6	21	268
Denominational institutions:			
not to receive public money or credit	9	4	294
District attorneys:			
terms of	10	1	295
removable by governor	10	1	295
removals of, for failures to prosecute for bribery	13	6	315
District court judges:			
may be selected in different cities	6	17	263
Districts. (See Assembly, Senate, Judicial districts.)			

	Art.	Sec.	Page.
Divorce:			
to be granted only by due judicial proceedings	1	9	160
Due process of law:			
person not to be deprived of life, liberty or property without	1	6	132
Duration of office:			
when not fixed by law	10	3	302
Elections:			
to be by ballot or other secret method	2	5	171
of town officers, need not be by ballot	2	5	171
boards of, to be bi-partisan, except in towns and villages	2	6	172
when to be held	3	9	200
(See Titles of officers.)			
Electors:			
who are, qualifications	2	1	167
absent, in army or navy, how to vote	2	1	167
disqualification	2	2	169
what constitutes residence	2	3	170
Enacting clause of bills:			
form of	3	14	202
Engineer. (See State engineer.)			
Enumeration of inhabitants:			
when to be taken	3	4	192
Erie canal:			
no tolls on	7	9	275
not to be sold, leased, etc	7	8	274
Escheats:			
when lands escheat	1	10	161
Executive power:			
vested in governor	4	1	229
Extra compensation:			
to contractors, not allowed	3	28	227
	7	9	275
Fees:			
laws increasing or decreasing, etc., to be general	3	18	214
judicial officers except justices of peace not to receive	6	20	267
no state officers to receive	10	9	305
Feudal tenures:			
abolished	1	11	162
Fines:			
excessive, not to be imposed	1	5	131
on grants of land, void	1	14	164
Forest preserve:			
to be preserved	7	7	274
Freedom of speech:			
press, secured	1	8	159
religion	1	3	130

Funds. (See Sinking fund, Common school fund, Literature fund, U. S. deposit fund.)	Art.	Sec.	Page.
Gambling:			
prohibited	1	9	160
Gauging:			
office for, abolished	5	8	241
Governor:			
term of	4	1	229
term of, elected in 1894	4	1	229
persons eligible as	4	2	229
times and places of election	4	3	229
in case of tie vote for, legislature to decide	4	3	229
to be commander-in-chief	4	4	230
may convene legislature in extraordinary session	4	4	230
shall communicate by message with legislature	4	4	230
general powers	4	4	230
salary and residence	4	4	230
may grant pardons, etc., except for treason and impeachment	4	5	231
in treason cases, may suspend sentence	4	5	231
shall communicate to legislature each case of pardon, etc	4	5	231
to continue as commander-in-chief, though without the state	6	4	250
when president of senate to act as	4	7	233
when speaker of the assembly to act as	4	7	233
powers and duties of, in relation to signing and vetoing of bills	4	9	234
may remove certain county officers	10	1	295
to appoint certain militia officers	11	4	306
powers of, relative to removal of militia officers	11	6	307
may remove district attorney for failure to prosecute bribery cases	13	6	315
Grants:			
certain, with rents reserved, void	1	13	163
from king of Great Britain	1	17	166
Habeas corpus:			
writ of, not to be suspended	1	4	131
Hamilton county:			
legislature may abolish	3	5	194
Impeachment:			
assembly to have power of	6	13	259
concurrence of two-thirds necessary	6	13	259
court for trial of, of whom composed	6	13	259
judgment of, to what to extend	6	13	259

Impeachment — (Continued).	Art.	Sec.	Page.
members of court to be sworn	6	13	259
of governor or lieutenant-governor; lieutenant-governor not to act on trial of	6	13	259
Indians:			
contract for purchase of land of, when void	1	15	164
Indictment:			
no person to be tried without	1	6	132
person convicted on impeachment, liable to	6	13	259
Infamous crime:			
not to answer for, unless on indictment	1	6	132
persons guilty of, may be deprived of right to vote	2	2	169
Inferior local courts:			
removal of judges of, clerks of	6	17	263
may be established	6	18	265
legislature may confer on, any jurisdiction of county courts	6	18	265
Inspection:			
all offices for, abolished, and not to be created	5	8	241
Inspectors:			
board to be bi partisan	2	6	172
Interest:			
laws regulating, to be general	3	18	214
Invasion:			
debt may be created to repel	7	3	270
Jeopardy:			
person not to be put twice in	1	6	132
Journals:			
each house of legislature to keep	3	11	201
yeas and nays, when to be entered in	3	15	202
objections of governor to be entered on	4	9	234
Judge:			
removal of	6	11	257
limitation of age of	6	12	258
compensation	6	12	258
Judge of court of appeals:			
term of	6	7	252
vacancies in office of	6	8	253
not to hold any other office of public trust	6	10	256
votes given for, for other than judicial office, void	6	10	256
removal of	6	11	257
compensation of, not to be increased or diminished	6	12	258
age limitation	6	12	258
compensation after seventy years of age	6	12	258
not to practice as attorneys	6	20	267

	Art.	Sec.	Page.
Judge of court of appeals — (Continued).			
eligibility	6	20	267
(See Court of appeals.)			
Judges of inferior courts:			
removal of	6	17	263
clerks of, removal of	6	17	263
not to practice as attorney if judge of certain courts	6	20	267
Judicial decisions:			
free for publication	6	21	268
Judicial departments:			
creation of	6	2	246
Judicial districts:			
continued, when legislature may alter	6	1	244
Jurors:			
laws for selecting, etc., to be general	3	18	214
Jury:			
trial by, to remain inviolate	1	2	127
when may be waived	1	2	127
indictment for grand, necessary for infamous crime	1	6	132
judge of law and fact, in libel cases	1	8	159
to assess property, where road is laid out,	1	7	156
Justice of peace:			
to be elected, terms of	6	17	263
vacancies	6	17	263
number and classification to be regulated by law	6	17	263
removal of	6	17	263
to hold office until expiration of terms	6	22	268
Justices of supreme court:			
number of	6	1	244
twelve additional, to be chosen	6	1	244
designation of, to act in appellate division	6	2	246
not to sit in review of decision made by him	6	3	249
terms of	6	4	250
vacancies in office of	6	4	250
judges of certain courts become, after 1895	6	5	250
may hold court in any county	6	6	252
not to hold any other public trust	6	10	256
votes for, for other than judicial offices, void	6	10	256
removal of	6	11	257
compensation of, not to be increased or diminished	6	12	258
age limitation	6	12	258
compensation after seventy years of age.	6	12	258
of appellate division, may appoint clerk.	6	19	267
not to practice as attorneys	6	20	267

	Art.	Sec.	Page.
Justices of supreme court — (Continued).			
eligibility	6	20	267
(See Supreme Court.)			
King of Great Britain:			
grants of lands by	1	17	166
Larceny:			
petit, indictment not necessary	1	6	132
Land office:			
commissioners of	5	5	240
Land purchases from Indians:			
void, unless, etc	1	15	164
Land:			
of state, people possess original property in	1	10	161
all lands in State are allodial	1	12	162
certain restraints on alienation of, void	1	14	164
contracts with Indians for sale of, when void	1	15	164
grants by King of England, when void	1	17	166
low, acts for draining, to be general	3	18	214
forest preserve, to be protected and preserved	7	7	274
Law and equity:			
Supreme Court of	6	1	244
Laws:			
to be enacted by bill only	3	14	202
general, may authorize construction of drain by owners of agricultural lands on land of others	1	7	156
what constitutes law of State	1	16	165
existing, not to be enacted without being inserted	3	17	213
which impose or revive tax, to distinctly state it	3	24	224
relative to cities, special provisions as to	12	2	308
(See Bills.)			
Lease:			
of agricultural land for more than twelve years	1	13	163
Legislature:			
to pass laws prohibiting pool-selling, etc	1	9	160
may abolish Hamilton county	3	5	194
compensation of members of	3	6	199
members of, not to receive civil appointment	3	7	199
who ineligible to	3	8	200
when members of, to be elected	3	9	200
quorum of each house	3	10	201
each house to determine rules of proceeding	3	10	201
each house to judge of qualification of its members	3	10	201

Legislature — (Continued).	Art.	Sec.	Page.
each house of, to keep journals	3	11	201
doors of each house, when to be kept open	3	11	201
neither house to adjourn without consent of other	3	11	201
members of, not to be questioned for speech or debate in	3	12	201
bills may originate in either house	3	13	202
either house of, may amend bills	3	13	202
majority of each house necessary to pass bill	3	15	202
	3	16	203
restrictions on passage of private or local bills	3	18	214
not to audit or allow private claims	3	19	221
when two-thirds vote of, necessary	3	20	222
when yeas and nays to be taken	3	25	225
when three-fifths necessary for quorum	3	25	225
shall confer powers of local legislation on boards of supervisors	3	27	227
must not grant extra compensation	3	28	227
shall provide for employment of prisoners	3	29	228
to decide, in case of tie vote for Governor or Lieutenant-Governor	4	3	229
may be convened in extraordinary session by Governor	4	4	230
may alter judicial districts	6	1	244
may alter judicial departments	6	2	246
may alter and regulate proceedings in law and equity	6	3	249
may prohibit county judge and surrogate practicing as attorneys	6	20	267
not to allow claim barred by statute of limitations	7	6	272
may provide for blind, deaf and dumb, and juvenile delinquents	8	14	291
when to meet	10	6	304
(See Assembly; Senate; Bills; Laws; Ayes and Noes; Two-thirds.)			
Liability			
of corporation and stockholders	8	2	280
of stockholders of banking institutions	8	7	283
Libel:			
truth may be given in evidence	1	8	159
law and facts to be determined by jury	1	8	159
Liberty of conscience:			
not to justify acts of licentiousness	1	3	130
Lieutenant-Governor:			
term of	4	1	229
term of, elected in 1894	4	1	229
person eligible as	4	2	229

Lieutenant-Governor — (Continued).	Art.	Sec.	Page.
times and places of, election of	4	7	233
	4	3	229
in case of tie vote for, Legislature to decide	4	3	229
to act as Governor, in case of vacancy in office	4	6	232
to be President of Senate and have casting vote	4	7	233
who to act as, if impeached, refuses to act, or acts as Governor	3	16	201
compensation of	4	8	233
Life and liberty:			
due process of law necessary to deprive of	1	6	132
Limitation of claims:			
against the State	7	6	272
Literature fund:			
capital to be inviolate	9	3	294
revenue of, to be applied to support of academies	9	3	294
Local bills:			
to embrace but one subject, expressed in title	3	16	203
not to be passed, relating to certain subjects	3	18	214
Local judicial officers:			
to hold office until expiration of terms	6	22	268
Legislature may provide not to exceed two, to act as county judge or surrogate	6	26	263
Local legislation:			
powers of may be conferred on supervisors	3	27	227
Lotteries:			
prohibited	1	9	160
Majority:			
of each house, necessary for quorum	3	10	201
necessary to pass bills	3	15	202
Measures and weights:			
how supplied	5	8	241
Measuring:			
offices for, abolished	5	8	241
Message:			
Governor to communicate to Legislature	4	4	230
objections to bill	4	9	234
Militia:			
who constitute	11	1	305
Legislature may provide for enlistments	11	1	305
land and naval forces, active and reserve	11	3	306
Legislature to provide for	11	3	306

	Art.	Sec.	Page.
Militia—(Continued).			
Governor to appoint certain commissioned officers	11	4	306
other officers to be appointed as Legislature directs	11	5	306
commissions	11	6	307
removal of commissioned officers	11	6	307
Money:			
bills and notes issued as, to be registered	8	6	282
specific payments, not to be suspended	8	5	282
not to be paid out of treasury, without appropriation	3	21	223
Municipal corporations:			
may be created by special acts	8	1	278
(See Counties; Cities; Villages and Towns.)			
Municipalities:			
restrictions of taxation; incurring of debts; expenditure of money	8	10	284
Names:			
act changing, to be general	3	18	214
New York city:			
common council of, to have powers and duties of supervisors	3	26	226
election of officers in, when held	12	3	311
(See Common Pleas; Superior Court of New York.)			
New York Superior Court. (See Superior Court of New York.)			
Oath:			
constitutional, form of	13	1	312
Officers:			
laws increasing, etc., fees of, to be general	3	18	214
judicial, not to receive fees	6	20	267
county, not provided by Constitution, how chosen	10	2	297
city, town and county, not provided by Constitution, how chosen	10	2	297
other officers, how chosen	10	2	297
time of electing, to be prescribed by law	10	4	303
vacancies	10	5	303
persons appointed to fill vacancy in elective office to hold until January first	10	5	303
provision to be made for removal of, for misconduct	10	7	304
where salary is fixed by Constitution, to receive no additional	10	9	305
other officers to receive fixed salary	10	9	305
which shall not be increased or diminished	10	9	305
not to receive fees to own use	10	9	305

	Art.	Sec.	Page.
Officers — (Continued).			
city, when to be elected	12	3	311
terms of city, in office January 1, 1895	12	3	311
accepting bribe for official action, guilty of felony	13	2	313
bribery of public officers	13	3	313
public, not to accept passes or franking privileges	13	5	314
use of, constitutes misdemeanor	13	5	314
for weighing, inspecting, etc., abolished. (See title of respective officers.)	5	8	241
Office:			
duration of, may be declared by law	10	3	302
when not declared, to be held during authority making appointment	10	3	302
vacancies in, Legislature to provide for filling	10	5	303
provision to be made for removal from	10	7	304
Legislature may declare when vacant	10	8	304
oath of, form of	13	1	312
Oyer and terminer. (See Court of oyer and terminer.)			
Pardons and commutations:			
powers of Governor relative to	4	5	231
Governor to communicate to Legislature all cases of	4	5	231
Passes:			
acceptance or use of, by public officer a misdemeanor	13	5	314
Personal liability:			
of stockholders and corporators	8	2	280
of banking institutions	8	7	283
Petition:			
right of, guaranteed	1	9	160
Political year:			
to begin January first	10	6	304
Pool selling:			
prohibited	1	9	160
President of Senate:			
when to act as Governor	4	7	233
pro tempore, when chosen	3	10	201
Press:			
liberty of	1	8	159
Prisons:			
contract system in, abolished	3	29	228
Legislature to provide for employment of convicts	3	29	228
officers of, how appointed	5	4	239
superintendent, appointment of, etc	5	4	239
Private or local bill:			
to embrace but one subject, expressed in title	3	16	203

	Art.	Sec.	Page.
Private or local bill — (Continued).			
not to be passed in certain cases	3	18	214
certain, prohibited	3	18	214
Private road:			
may be opened	1	7	156
necessity of, and damages for, ascertained	1	7	156
Property:			
private, due process of law necessary	1	6	132
not to be taken for public use without compensation	1	6	132
manner of ascertaining compensation for, where taken for public use	1	7	156
public, applied to local purposes, requires two-thirds vote	3	20	222
Public money or property:			
for local purposes requires two-thirds vote	3	20	222
not to be paid without appropriation in two years	3	21	223
Public works:			
superintendent of, appointment of, etc.	5	3	237
Punishments:			
cruel and unusual, not to be inflicted	1	5	131
Qualifications:			
of electors	2	1	167
Quarter sales:			
restraint of, on alienation of land, void	1	14	164
Question:			
on bill to borrow money, how put	7	4	270
Quorum:			
of legislative house	3	10	201
when three-fifths necessary	3	25	225
what to constitute in Court of Appeals	6	7	252
Railroad tracks:			
right to lay down, to be granted by general law only	3	18	214
Regents:			
continued, subject to legislative control	9	2	293
Registration:			
when to be required for voting	2	4	171
boards of, to be bi-partisan	2	6	172
Register in New York. (See Clerk and register in New York.)			
Religion:			
free exercise of, not to affect competency of witness; liberty of, not to justify licentiousness	1	3	130
Religious institutions:			
not to receive public money or credit	9	4	294

	Art.	Sec.	Page
Removal:			
of officers other than judicial, local or legislative	10	7	304
(See title of respective officers.)			
Rent and services:			
certain saved	1	11	162
Reporter:			
of Court of Appeals	6	7	252
of Supreme court	6	2	246
Reports:			
of decisions to be published, to be free for publication	6	21	268
Reprieves and pardons. (See Pardons and Commutations.)			
Residence:			
what constitutes, for voting	2	1	167
when person deemed to neither gain nor lose	2	3	170
of persons eligible as Governor	4	2	229
Resolutions:			
certain, law of State	1	16	165
Revenues:			
of municipalities, not to be applied to private uses	8	10	284
Roads:			
acts laying out, etc., to be general	3	18	214
Rules			
each house of Legislature to determine its own	3	10	201
Sailors:			
to be preferred in civil service appointments	5	9	241
may vote	2	1	167
Sale:			
of certain canals forbidden	7	8	274
Salt Springs. (Not referred to in this Constitution.)			
Savings banks:			
charters to be uniform	8	4	281
not to have stock; officers not to be interested in	8	4	281
School fund. (See Common School Fund.)			
Schools. (See Common schools.)			
Secrecy:			
of legislative proceedings, when allowed.	3	11	201
Secretary of state:			
when chosen	5	1	236
term of, to be two years	5	1, 2	236
compensation not to be increased or diminished	5	1	236
not to receive fees for own use	5	1	236
term of, elected in 1895, to be three years,	5	2	236

	Art.	Sec.	Page.
Secretary of state — (Continued).			
to be commissioner of land office, commissioner of canal fund and member of canal board	5	5	240
Senate:			
of what to consist	3	2	184
senators, when elected; terms	3	2	184
districts, description of	3	3	184
when to be altered	3	4	192
county not to be divided in forming,	3	4	192
town or city block, not to be divided in forming	3	4	192
limitation as to excess of population,	3	4	192
when county shall not have four or more senators	3	4	192
no county to have more than one-third of senators	3	4	192
two adjoining counties, not to have more than one-half of senators	3	4	192
ratio for apportioning	3	4	192
when districts may be increased	3	4	192
compensation of senators	3	6	199
civil appointment of senators void	3	7	199
	3	8	200
to choose temporary president	3	10	201
when president of, to act as Governor... (See Legislature.)	4	7	233
Sheriff:			
term of	10	1	295
ineligible to hold other office	10	1	295
not to succeed himself	10	1	295
may be required to renew security	10	1	295
county cannot be made responsible for acts of sheriff	10	1	295
removable by governor	10	1	295
vacancies in office of	10	5	303
Sinking funds:			
to be separately kept and invested	7	5	272
not to be diverted	7	5	272
Soldiers:			
to be preferred in civil service appointments	5	9	241
to vote	2	1	167
Speaker of assembly:			
to be commissioner of land office	5	5	240
when to act as governor	4	7	233
Specie payments:			
legislature not to authorize suspension of,	8	5	282
Speech:			
liberty of	1	8	159
member of legislature not to be questioned for	3	12	201

State:	Art.	Sec.	Page.
claims against, audit or allowance of	7	6	272
legislature not to audit or allow	3	19	221
credit of, not to be loaned to individuals, etc	7	1, 9	269, 275
	8	9	283
may contract debts to meet casual deficit,	7	2	269
claims against, when barred by lapse of time	7	6	272
lands of, to be preserved	7	7	274
credit or money not to be granted to religious institutions	9	4	294
State board of charities:			
provided for	8	11, 13	291
State commission in lunacy:			
provided for	8	11, 13	291
State commission of prisons:			
provided for	8	11, 13	290, 291
State engineer and surveyor:			
when chosen	5	1	236
must be practical civil engineer	5	1	236
term of, to be two years	5	1, 2	236
compensation of, not to be increased or diminished	5	1	236
not to receive fees to own use	5	1	236
term of, elected in 1895, to be three years	5	2	236
to be commissioner of land office and member of canal board	5	5	240
State prisons:			
superintendent or, powers of, etc	5	4	239
Statutes:			
legislature to provide for speedy publication of	6	21	268
certain laws of this state	1	16	165
Street railroads:			
conditions on operation or construction.	3	18	214
Suffrage:			
who entitled to	2	1	167
who may be deprived of	2	2	169
proof of, how ascertained	2	4	171
Superintendent of public works:			
appointment, term, compensation, powers and duties, removal	5	3	237
to be member of canal board	5	5	240
Superintendent of state prisons:			
appointment, term, powers, duties, removal	5	4	239
Superior court of Buffalo. (See Buffalo Superior court.)			
Superior court of New York:			
abolished after 1895	6	5	250

	Art.	Sec.	Page.
Superior court of New York—(Continued).			
jurisdiction transferred to supreme court,	6	2, 5	246, 250
judges of, to become justices of supreme court	6	5	250
disposition of records of	6	5	250
appeals from	6	5	250
Supervisors:			
laws providing for election of, to be general	3	18	214
board of, to be in each county	3	26	226
legislature to confer powers of local legislation on	3	27	227
boards of, not to grant extra compensation	3	28	227
Supreme court:			
continued, with general jurisdiction	6	1	244
of whom to consist	6	1	244
quorum of	6	2	246
judicial districts	6	1	244
judicial departments	6	2	246
appellate division	6	2	246
of whom to consist	6	2	246
jurisdiction of	6	2	246
reporter of	6	2	246
special and trial terms, by whom fixed	6	2	246
vested with jurisdiction of superior court of New York, superior court of Buffalo, the court of common pleas and Brooklyn city court	6	5	250
vested with jurisdiction of oyer and terminer and circuit	6	6	252
unanimous decision of appellate division, when not reviewable	6	9	254
when appeals may be taken to court of appeals	6	9	254
clerk of	6	19	267
(See Justices of supreme court.)			
Surrogates:			
in office, continued	6	15	261
terms of	6	15	261
jurisdiction of	6	15	261
when separate surrogate may be elected	6	15	261
salary to be established by law	6	15	261
age limitation	6	15	261
vacancies	6	15	261
compensation not to be increased or diminished	6	15	261
local officers may be provided to act as	6	16	263
not to practice as attorneys in counties of over 120,000	6	20	267
except in Hamilton county, to be attorney	6	20	267

	Art.	Sec.	Page.
Surrogate's court:			
continued	6	15	261
jurisdiction of	6	15	261
legislature may confer certain jurisdiction of, on supreme court	6	15	261
Surveyor, state. (See State engineer and surveyor.)			
Swamps:			
acts for draining, to be general	3	18	214
Taxation:			
restrictions on municipal corporations	8	10	284
Tax:			
law which imposes or revives, to distinctly state	3	24	224
bill for, to be passed by yeas and nays	3	25	225
three-fifths make a quorum	3	25	225
Testimony:			
in equity cases to be taken same as in law cases	6	3	249
Three-fifths:			
necessary for quorum on certain bills	3	25	225
Title of bills:			
local and private	3	16	203
Tolls:			
on canals abolished	7	9	269
Towns:			
credit of, loan of, prohibited	8	10	284
limitations of indebtedness	8	10	284
may provide for orphan asylums, etc	8	14	291
payments by, to eleemosynary and reformatory institutions may be authorized	8	14	291
credit or money not to be granted to denominational institutions	9	4	294
officers of, not provided by constitution, how chosen	10	2	297
Travel:			
of members of legislature, compensation for	3	6	199
Treason:			
governor may suspend execution of sentence	4	5	231
legislature may pardon	4	5	231
Treasurer:			
when chosen	5	1	236
term of, to be two years	5	1, 2	236
compensation not to be increased or diminished	5	1	236
not to receive fees to own use	5	1	236
term of, elected in 1895, to be three years,	5	1	236

	Art.	Sec.	Page.
Treasurer -- (Continued).			
to be commissioner of land office, of canal fund and member of canal board	5	5	240
may be suspended by governor	5	7	240
Treasury:			
money not to be paid out of, except by appropriation	3	21	223
Two-thirds:			
when assent of two-thirds of members of legislature is necessary	3	20	222
of all present on bill returned by governor	4	9	234
United States deposit fund:			
capital to be inviolate	9	3	294
revenue of	9	3	294
University of State of New York. (See Regents.)			
Vacancy:			
provisions to be made for filling	10	7	304
legislature may declare when office is vacant	10	8	304
(See titles of officers.)			
Venue:			
change of, to be by general law	3	18	214
Veto:			
of governor	4	9	234
Villages:			
incorporation of, to be under general laws	3	18	214
credit of, not to be loaned	8	10	284
limitations of indebtedness	8	10	284
may provide for orphan asylums, etc	8	14	291
payments by, to eleemosynary and reformatory institutions may be authorized	8	14	291
credit of money not to be devoted to denominational institutions	9	4	294
officers of, not provided by constitution, how chosen	10	2	297
Votes:			
boards for receiving, counting, etc., of, to be bi-partisan	2	6	172
certain, for members of legislature, void	3	7	199
Voters:			
who are	2	1	167
bribery or wager, disfranchise	2	2	169
registration of, when required	2	4	171
Weighing:			
offices for, abolished	5	8	241

	Art.	Sec.	Page.
Weights and measures:			
offices may be created for supplying correct standards of	5	8	241
Witness:			
competency not affected by religion	1	8	159
not to be unreasonably detained	1	5	131
person need not be, against himself	1	6	132
person charged with bribery may testify in own behalf	13	4	314
Year:			
legislative and political, to begin January first	10	6	304
Yeas and nays. (See Ayes and nays.)			

THE LEGISLATIVE LAW.

AN ACT in relation to legislation, constituting chapter thirty-two of the consolidated laws.

Chapter 37, of the laws of 1909.

Article I. Short title.
II. Members, officers and employees of the legislature (§§ 2-24).
III. The enactment and publication of laws (§§ 40-49).
IV. Legislative committees; testimony in legislative proceedings (§§ 60-66).
V. Laws repealed; when to take effect (§§ 90, 91).

ARTICLE I.

Short Title.

Section 1. Short title.

Section 1. **Short title.**— This chapter shall be known as the "Legislative Law."

ARTICLE II.

Members, Officers and Employees of the Legislature.

Section 2. Exemption of members and officers from arrest.
3. Expulsion of members.
4. Contempts of either house.
5. Payment of salaries of members.
6. Officers and employees of the senate.
7. Officers and employees of the assembly.

Section 8. Appointments to be entered on journals.
9. Stenographers to special committees.
10. Compensation of officers and employees.
11. Compensation during extra sessions and impeachment trials.
12. Attendance of officers of each session at opening of next session.
13. Officers remaining after adjournment.
14. Undertaking of clerk of each house.
15. Duties of clerks.
16. Supplies furnished by clerks.
17. Accountability of clerks to comptroller.
18. Duties of postmasters and assistants.
19. Duties of stenographers.
20. Detail of officers and employees for special duties.
21. Limitation of legislative expenses.
22. Custody of legislative papers and documents.
23. Appropriation bills, how referred.
24. Drafting and revising of bills.

§ 2. **Exemption of members and officers from arrest.**— A member of the legislature shall be privileged from arrest in a civil action or proceeding other than for a forfeiture or breach of trust in public office or employment, while attending upon its session, and for fourteen days before and after each session, or while absent for not more than fourteen days during the session with the leave of the house of which he is a member.

An officer of either house shall be privileged from arrest in such a civil action or proceeding while in actual attendance upon the house. Either house shall have the power to discharge from arrest any of its members or officers arrested in violation of his privilege from arrest.

§ 3. **Expulsion of members.**— Each house has the power to expel any of its members, after the report

of a committee to inquire into the charges against him shall have been made.

§ 4. **Contempts of either house.**— Each house may punish by imprisonment not extending beyond the same session of the legislature, as for a contempt, for the following offenses only:

1. Arresting a member or officer of either house in violation of his privilege from arrest;

2. Disorderly conduct of its members, officers or others in the immediate view and presence of the house, tending to interrupt its proceedings;

3. The publication of a false and malicious report of its proceedings, or of the conduct of a member in his legislative capacity;

4. Giving or offering a bribe to a member, or attempting, by menace or other corrupt means, directly or indirectly, to influence a member in giving or withholding his vote, or in not attending meetings of the house of which he is a member;

5. Neglect to attend or to be examined as a witness before the house or committee thereof, or upon reasonable notice to produce any material books, papers, or documents, when duly required to give testimony or to produce such books, papers or documents in a legislative proceeding, inquiry or investigation.

§ 5. **Payment of salaries of members.**—The salary of a member of the legislature shall be payable during the session, from time to time, at the rate of ten dollars per day, at any time during the session, for the number of days then expired, not exceeding in

the aggregate twelve hundred dollars, before the final adjournment of the legislature. The balance of such salary shall be payable at the final adjournment of the legislature.

§ 6. **Officers and employees of the senate.**— The president and temporary president of the senate may each appoint a clerk, a stenographer and a messenger. The senate may choose a clerk, a sergeant-at-arms, an assistant sergeant-at-arms, a stenographer, a principal doorkeeper and first assistant doorkeeper. The clerk of the senate may appoint one assistant clerk, a journal clerk, two assistant journal clerks, an executive clerk, five deputy clerks, an index clerk, an assistant index clerk, a revision clerk who shall be an expert in matters pertaining to that position, a librarian, an assistant librarian, a financial clerk, a messenger to the financial clerk, a clerk's messenger, a superintendent of documents, four assistant superintendents of documents, a superintendent of the wrapping department, four assistant superintendents of the wrapping department, a postmaster, an assistant postmaster, a post-office messenger, ten assistant doorkeepers, a janitor, and two assistant janitors of the senate chamber and its ante-rooms, a clerk, a stenographer and a messenger to each of the committees on finance, on affairs of cities and on judiciary; a clerk to each of the committees on codes, railroads, canals, insurance, taxation and retrenchment, printed and engrossed bills, revision, internal affairs of towns and counties and forest, fish and game laws; twelve general committee clerks, fifteen stenographers, one chief messenger and

eight messengers to serve under the direction of the clerk of the senate upon the standing committees of the senate not herein otherwise provided for, or as the business of the senate shall require; one of the said stenographers shall be assigned to the selected representative of the minority upon the finance committee, one as assistant to the stenographer of the senate, one as stenographer to the journal clerk of the senate, and one to the clerk of the senate; fifteen pages to serve under the direction of the clerk of the senate. The term of all employees as chosen or appointed under this section, shall be for the session except that of clerk of the senate, who shall be elected for the term of the senate.

§ 7. **Officers and employees of the assembly.**—The speaker of the assembly may appoint a clerk, a stenographer and a messenger to be known as the speaker's clerk, the speaker's stenographer and the speaker's messenger, respectively, and also twelve assistant doorkeepers, a postmaster, an assistant postmaster, a post-office messenger, a janitor of the assembly chamber and its ante rooms, four assistant janitors, a messenger to the committee on ways and means, a messenger to the committee on the affairs of cities, ten general clerks, ten general messengers, and thirty-five clerks of committees, one of whom shall be designated to serve as clerk to the committee on ways and means, one as clerk to the committee on judiciary, one as clerk to the committee on general laws, one as clerk to the committee on cities, one as clerk to the committee on railroads, one as clerk to the committee on

codes, and the others to serve under the direction of the clerk of the assembly. He may also appoint ten stenographers, one of whom shall be assigned to the committee on ways and means, one to the committee on cities, one to the committee on judiciary, one to the committee on general laws, one to the committee on railroads, one to the committee on codes, one to the committee on insurance, one to the journal clerk of the assembly, one to the index clerk of the assembly, and one to the selected representative of the minority upon the committee on ways and means. The assembly may choose a clerk, a sergeant-at-arms, a stenographer, a principal doorkeeper, who shall act as assistant sergeant-at-arms, and a first and second assistant. The clerk of the assembly may appoint a stenographer to the clerk, a clerk's messenger, an assistant clerk, a journal clerk, two assistant journal clerks, twelve deputy clerks, one of whom shall act as clerk to the committee on engrossed bills, and one as clerk to the committee on revision, who shall be an expert in matters pertaining to that position, an index clerk, two assistant index clerks, a librarian and assistant librarian, an assistant clerk to the committee on engrossed bills, a financial clerk, an assistant financial clerk, a messenger to the financial clerk, a superintendent of the wrapping department, five assistants to the superintendent of the wrapping department, a mail and document carrier, a superintendent of documents, five assistant superintendents of documents, a tally clerk, ten general stenographers, five messengers, one of whom shall have charge of the pages under the direction of the clerk of the assembly, twenty messengers to committees and twenty-five pages.

§ 8. **Appointments to be entered on journals.**—All appointments made under this chapter shall be entered on the journal of the house wherein made, with a statement of the date of appointment and the length of time the same is to continue.

§ 9. **Stenographers to special committees.**—No additional officers or employees shall be elected or appointed by the senate or assembly, except that either house, by a majority vote, may employ a stenographer for a committee of investigation or other special committee.

§ 10. **Compensation of officers and employees.**—The following compensation shall be paid to the officers and employees of the senate and assembly for the annual session of the legislature: To the clerk of each house three thousand five hundred dollars; to the clerk of the senate five hundred dollars and to the clerk of the assembly seven hundred and fifty dollars for indexing the journals, bills and documents of the senate and assembly; to the clerk of the senate not to exceed five hundred dollars, and to the clerk of the assembly not to exceed seven hundred and fifty dollars for the extra clerical service and engrossing; to each assistant clerk two thousand five hundred dollars; to each journal clerk two thousand five hundred dollars; to each first assistant journal clerk and to the executive clerk one thousand five hundred dollars; to each second assistant journal clerk, and to the assistant clerk to the committee on engrossed bills of the assembly, each one thousand dollars; to

each deputy clerk, one thousand dollars, except the deputy clerk assigned as chief clerk of the engrossing rooms of the senate and assembly, who shall receive fifteen hundred dollars each; excepting also the deputy clerk assigned as clerk to the committee on revision in the assembly and the revision clerk of the senate who shall each receive fifteen hundred dollars; to each financial clerk, one thousand five hundred dollars; to the assistant financial clerk of the assembly, ten dollars per day; to the messenger of each of the financial clerks, five dollars per day; to each index clerk, two thousand dollars; to the first assistant index clerk of the assembly, fifteen hundred dollars; to the second assistant index clerk of the assembly and to the assistant index clerk of the senate, each one thousand dollars; to the clerk of the president of the senate, to the clerk of the temporary president and to the speaker's clerk, each ten dollars per day; to the stenographer of the president of the senate, of the temporary president, of the speaker, of the clerk of the senate, and clerk of the assembly, and each of the stenographers appointed in addition thereto by the speaker, and the clerk of the senate, five dollars per day; to each general stenographer of the assembly three dollars per day; to each sergeant-at-arms, librarian, and postmaster, six dollars per day; to the assistant sergeant-at-arms of the senate, to each assistant librarian, assistant postmaster, principal doorkeeper, assistant doorkeeper, janitor, assistant janitor, superintendent of documents, and to each assistant superintendent of documents, superintendent of the wrapping department, assistant superintendents of the wrapping

department, five dollars per day; to the stenographer of each house, two thousand five hundred dollars; to each clerk of the senate committee on finance and affairs of cities, ten dollars per day; to each clerk of the senate committees on judiciary and codes, seven dollars per day; to each clerk of the assembly committees on ways and means, and affairs of cities, ten dollars per day; to the clerk of the assembly committees on judiciary, on codes, on railroads, seven dollars per day; to each other committee clerk of each house and each general clerk of the assembly, five dollars per day; to the postoffice messenger of each house, three dollars per day; to the messenger of the president of the senate, the temporary president and the speaker's messenger, each three dollars per day; to the superintendent of the wrapping department, to each assistant superintendent of the wrapping department, to the tally clerk, and the mail and document carrier of the assembly, five dollars per day; to each general messenger of each house, three dollars per day; to each clerk's messenger of each house and to each messenger of the committees of each house, three dollars per day; to each messenger having charge of the pages in the senate and assembly, five dollars per day; and to each page, two dollars per day. The pay of the officers or the employees who receive by this chapter a per diem compensation shall commence at the date of the appointment, and no person or employee shall receive any additional compensation during the term of service for which he shall be appointed.

§ 11. **Compensation during extra sessions and impeachment trials.**— An employee of the senate or

assembly, during an extra session of the legislature, or an officer or employee of the senate designated to attend upon the senate when sitting as a court for the trial of impeachments, or upon the trial of public officers on the recommendation of the governor, shall receive the same per diem allowance during such term or extra session as his compensation or per diem allowance would give per day of the regular session of the same year.

§ 12. **Attendance of officers of each session at opening of next session.**— The clerk of each house, and one officer thereof designated by him, shall attend and receive compensation for a period of eight days for their services prior to and upon the opening of the next succeeding session of the legislature, and the following other officers only of each session shall attend and receive compensation for their services upon the opening of the next succeeding session of the legislature: the assistant clerk, the journal clerk, speaker's clerk, sergeant-at-arms, postmasters, financial clerk, index clerk, stenographer and principal doorkeeper of the senate and assembly and assistant doorkeeper and four pages in the senate, and three assistant doorkeepers, two messengers and six pages in the assembly, the assistant doorkeepers, messengers and pages to be designated by the presiding officer of the house for which appointed before the close of the session and entered upon the journal of the house. The officers named in this section shall receive for services upon the opening of a succeeding session of the legislature the same per diem compensation as they were entitled to receive at the preceding session for like services.

§ 13. **Officers remaining after adjournment.**— The clerk of each house and five officers thereof to be designated by the presiding officer thereof may remain after the adjournment of the legislature to perform duty under the direction of the clerk of each house respectively for not to exceed thirty days. Such officers shall receive the same per diem compensation respectively, as they were entitled to receive during the session, to be paid upon the warrant of the comptroller on the certificate of the clerk of the house for which appointed.

§ 14. **Undertaking of clerk of each house.**— The clerk of each house before entering upon the duties of his office, shall execute an official undertaking in the sum of ten thousand dollars.

§ 15. **Duties of clerks.**— The clerks of the senate and assembly shall annually, without extra compensation, revise, and send to the members of the legislature, before the organization thereof, the clerk's manual, and shall, within thirty days after the organization of the legislature, prepare a statistical list of the members and officers, with their boarding places or places of residence while in the city of Albany.

The clerk of each house shall, as soon as practicable after the close of each session, prepare and deliver to the legislative printer the indexes to the journals, bills and documents of such house.

§ 16. **Supplies furnished by clerks.**— The clerk of each house shall purchase all stationery, printed blanks and other articles necessary for use in his official work,

or in the work of the sergeant-at-arms, and shall furnish its members, officers and reporters with necessary stationery and writing materials and shall prepay the postage on all letters deposited with them for transmission through the mails by members of the senate and assembly, respectively. The clerk of each house shall, under the direction and subject to the approval of the comptroller purchase such furniture as may be necessary for the house of which he is clerk.

§ 17. **Accountability of clerks to comptroller.**—The clerk of each house at the end of each month during the session shall account to the comptroller for all moneys received up to that time, and within ten days after the close of the session, shall file with the comptroller an abstract in such form and containing such particulars as the comptroller shall direct of all expenditures made by him, with the vouchers therefor; and shall give him satisfactory evidence that the expenditures were reasonable.

§ 18. **Duties of postmasters and assistants.**—The postmasters and assistant postmasters and post-office messengers shall perform all the labors in the post-offices of their respective houses.

§ 19. **Duties of stenographers.**—The stenographers shall attend at every session of the body for which they are appointed or elected and take stenographic notes of the debates of such body and in the committee of the whole thereof, and furnish a copy thereof written out in longhand, to any member of such body.

§ 20. **Detail of officers and employees for special duties.**— The presiding officer and clerk of each house may detail any of the officers or employees thereof to perform such duties in addition to those ordinarily performed as they may deem advisable to promote the business of such house.

§ 21. **Limitation of legislative expenses.**— Neither house shall, without the consent of the other, order to be printed more than four thousand copies of any paper or document, or the purchase of any books, the aggregate cost of which shall exceed one hundred dollars; or appoint any committee of its own members or others at the public expense, except in case of contested elections; or incur any expense whatever except as provided by this chapter.

§ 22. **Custody of legislative papers and documents.** — The clerk of each house shall take charge of and keep on file all documents of such house, and those presented to it; and shall cause all papers in his charge to be so classified and arranged that they can be easily found. No paper shall be withdrawn from the files of either house, whether the same be in charge of the regents of the university or the clerk of such house, except that such clerk, or a deputy appointed by him, shall have access to the papers of such house in charge of the regents for the purpose of taking copies. Any person may obtain a certified copy of any paper or document on such files by applying to the clerk in charge thereof and paying to such clerk the same fees as are charged by law by the secretary of state for

engrossing and certifying exemplifications of records deposited in his office. Either house may, by resolution, order title deeds or original documents accompanying any petition to be delivered to the persons entitled thereto. The journals of proceedings and documents of each house, heretofore published and now in the custody of its clerk, and the documents of each house hereafter published and kept in custody of its clerk, shall be deemed for all purposes to be the original journals of the proceedings and the original documents of such house. The clerk of each house shall compare a printed volume or volumes of its journal of proceedings hereafter published under his direction from the original manuscript copy thereof, and having noted in such printed volume or volumes each error contained therein, shall attach thereto a certificate, under his hand and official seal, that each such printed volume was published under his direction and that, as corrected, it is a correct transcript of the text of such original manuscript copy. He shall thereupon deposit and keep such printed volume or volumes, so corrected and certified, in his custody and the same shall thereupon become and be deemed for all purposes to be the original journal or journals of proceedings of such house; and the same, or a copy certified by the clerk, may be read in evidence. The manuscript copy of the journal prepared by the journal clerk shall be kept continuously in the custody of the clerk until the printed journal shall have been published, compared, corrected and certified in the form and manner provided herein. The clerk shall cause a duplicate or typewritten copy of said manuscript

copy of each day's journal to be prepared and furnished to the printer for his use in printing the published journal.

§ 23. **Appropriation bills, how referred.**— All bills that involve any appropriation from the treasury of the state, when introduced in the senate, shall be referred to the committee on finance, and when introduced in the assembly, shall be referred to the committee on ways and means.

§ 24. **Drafting and revision of bills.**— The temporary president of the senate and the speaker of the assembly shall appoint such number of competent persons as may be needed, not exceeding three, whose duty it shall be during the session of the legislature, on request of either house of the legislature or of any committee, member or officer thereof, to draft bills, examine and revise proposed bills, and advise as to the consistency or other effect of proposed legislation. Such persons shall receive a compensation to be fixed by the temporary president of the senate and the speaker of the assembly, and shall be entitled to their clerical and other necessary expenses, to be approved by such officers.

ARTICLE III.

The Enactment and Publication of Laws.

Section 40. Certificate of presiding officer.
41. Evidence of when bill becomes a law.
42. Deposit of laws and concurrent resolutions with secretary of state.

Section 43. Time of taking effect of laws.
44. Statement in session laws as to passage of law.
45. Publication of session laws; contents of published volumes of session laws.
46. Officers and institutions entitled to receive session laws.
47. Officers and institutions entitled to receive bound volumes of journals, bills and documents.
48. Publication of session laws and concurrent resolutions.
49. Slips of session laws to be forwarded to clerks.

§ 40. **Certificate of presiding officer.**— Upon the passage of a bill or concurrent resolution by either house, the presiding officer thereof shall append to such bill or resolution, a certificate of the date of its passage by the votes of a majority of all the members elected to such house or in the presence of three-fifths of such members, if such be the case, or by the votes of two-thirds of all the members elected to such house, as the case may be. No bills shall be deemed to have so passed unless certified by the presiding officer, which certificate to such effect shall be conclusive evidence thereof.

§ 41. **Evidence of when bill becomes a law.**— If a bill becomes a law by the approval of the governor, the certificate of the governor shall be the evidence of the time when the bill becomes a law. If a bill be-

comes a law by the failure of the governor to sign it or to return it to the house where it originated without his approval within the time required by the constitution, the certificate of the secretary of state of the time when it was filed in his office shall be evidence of the time when it became a law.

§ 42. **Deposit of laws and concurrent resolutions with secretary of state.**— Every concurrent resolution upon its passage, and every bill upon its becoming a law, with the certificate of the presiding officer of each house appended thereto, shall be deposited with the secretary of state. The secretary of state shall forthwith upon such deposit indorse upon each bill his certificate of the day, month and year it was filed in his office, and his certificate to such effect shall be presumptive evidence thereof. The secretary of state shall cause the original laws and concurrent resolutions passed at each session to be bound together in a volume of convenient size to be kept in his office. He shall compare with the original a volume of the printed laws, and having noted therein at the end of each law or resolution any error in the printed volume, shall deposit such printed volume with the original volume in his office. Each such volume shall be lettered on its back with its title and the session at which the laws were passed.

§ 43. **Time of taking effect of laws.**— Every law, unless a different time shall be prescribed therein, shall take effect on the twentieth day after it shall become a law.

§ 44. **Statement in session laws as to passage of law.**— In the publication of every law, the certificates appended thereto shall be omitted, but there shall be inserted immediately under the title of the law, a statement to the effect that it became a law upon the properly specified date, with or without the approval of the governor, or notwithstanding his objections, as the case may be, and adding the words "passed by a two-thirds vote," "passed, three-fifths being present," or "passed, a majority being present," in accordance with the certificates appended to the original bill. Such statement shall be presumptive evidence that the original law was certified by the presiding officer of each house accordingly.

§ 45. **Publication of session laws; contents of published volumes of session laws.**— The secretary of state shall annually cause the session laws to be published as soon as possible after the adjournment of the legislature. Such volumes shall contain:

1. A statement of the names and residences of the governor, lieutenant-governor, senators and members of assembly, the presiding officers and clerks of both houses in office during each session.

2. The laws and concurrent resolutions passed at each session.

3. Tables showing the laws and parts thereof amended or repealed by such laws.

4. Indexes of the laws and concurrent resolutions contained in such volumes.

5. Such other matters as are required by law to be published in such volumes.

Such laws, concurrent resolutions, tables, indexes and other matters so required to be published shall be prepared for publication in the state library under the supervision of the director thereof. Side notes or section headings shall be inserted indicating the subject-matter of the several sections of the laws and concurrent resolutions. Suitable references to existing general or consolidated laws, codes, or special or local laws may be made in foot notes or otherwise. The said director may submit to the state printing board changes in the style of execution as to type and paper, which, when approved by such board, shall be the style of execution to be thereafter followed in publication of session laws. All contracts hereafter entered into for the printing of session laws shall be for terms of two years, and shall provide for the printing thereof in the style as so approved, and with the notes and references and in the form, and containing the matter, herein authorized or required. Each volume printed for the state shall contain the certificate of the secretary of state that it was printed under his direction.

§ 46. **Officers and institutions entitled to receive session laws.**— As soon as the session laws of each session are printed and bound, the secretary of state shall distribute the bound printed volumes:

1. To the clerk of the senate, for the use of the senate, sixteen copies; and to the clerk of the assembly, for the use of the assembly, eighteen copies;

2. To the governor, for the use of the executive chamber, the lieutenant-governor, members of the legislature, clerks of the two house, judges of the court of appeals, the justices of the supreme court, and the

judges of the court of claims, each one copy; and to each state officer, and to each board or commission of state officers, having an office in the capitol, for their respective offices, each one copy;

3. To the county clerk of each county a sufficient number of copies to distribute one copy to each of the following officers in his county: each town clerk, for the use of the town; the district attorney; the clerk of the board of supervisors, for the use of the board; the county judge; the surrogate, except where the county judge acts as surrogate, for the use of the surrogate's court; the county treasurer; the jury commissioner, in counties in which the office of jury commissioner has been created; the mayor of each city, for the use of the city; and to each village clerk. Every such officer shall deliver such copy of the session laws to his successor in office. The expense of such distribution by the county clerk shall be a county charge;

4. To each incorporated college or university of the state, one copy;

5. To the athenæums of the cities of Philadelphia, Boston, New York and Albany, and to the Historical Society of the city of New York, each one copy;

6. To the secretary of state of the United States, four copies;

7. To the governors of the several states, as many copies as are directed to be sent by the governor of this state.

§ 47. **Officers and institutions entitled to receive bound volumes of journals, bills and documents.**—As soon as the journals, bills and documents are

bound, the clerks of the senate and assembly respectively shall distribute them as follows:

1. For the senate library, three copies of the journals and documents, and two copies of the bills;

2. For the assembly library, five copies of the journals and documents, and three copies of the bills;

3. For counties, public officers and incorporated colleges and universities in this state, one hundred and thirty-two copies of the journals and documents;

4. For the literary and scientific exchanges, to be made by the regents of the university, including one copy of each for each state and territory, one hundred and thirty-five copies of the journals and documents;

5. For the state library, two copies of the journals, documents and bills;

6. To the executive chamber, one copy of the bills;

7. To the office of the secretary of state, one copy of the bills.

§ 48. **Publication of session laws and concurrent resolutions.**— 1. All laws of a general nature which shall hereafter be passed by the legislature of this state, shall be published in at least two newspapers in each county of this state where there are or may be hereafter two newspapers published; and in one newspaper in each county where but one newspaper is published or may be published. All laws of a local nature which shall hereafter be passed by the legislature of this state, shall be published in like manner in each of the counties interested in the same. All laws affecting two or more counties, and not all the counties of the state, shall be considered local laws applicable to the several counties affected.

2. It shall be the duty of the secretary of state to transmit in the order in which they are passed, and within twenty days from the date of the filing of said laws in his office, to each treasurer of the several counties of the state, and to the publisher of each newspaper designated by law to publish the session laws of a general nature, and such as relate to the local affairs therein, for publication in the manner provided for in this section. It shall be the duty of each treasurer to cause the same to be published in the papers designated for publishing them, within ninety days from date of the receipt thereof by the said publisher; and the whole of every such law which, in the ordinary type of the newspaper in which it is published, would not occupy more than two columns, must be published in one issue, and when it exceeds such space, shall be published as soon as possible, by occupying such space in each successive issue. The secretary of state shall cause to be stated upon each and every law transmitted by him for publication as aforesaid, the exact number of folios contained therein, which shall be the basis for payment; and he shall also indicate in the same manner, which are general laws, and which are laws of a local nature applicable only to the county affected. It shall be the duty of the publisher of each newspaper designated to publish the session laws, to forward to the secretary of state, a marked copy of each general law published in said newspaper within five days after such publication, and also to forward to the county treasurer of the county within which such publication is made, a marked copy of each local law passed by the legislature and published under the provisions of this section. It shall be the duty of the

county treasurer to keep a correct record of all laws received from the secretary of state for publication, with the date of receipt, and number of folios indicated, and to report to the secretary of state on or before October first, in each year, whether the publication of general laws has been regularly made as provided by law, and he shall also report to the board of supervisors of his county during the first week of the annual session thereof, whether the publication of local laws has been made as provided by law, transmitting with his report a copy of each local law received from the secretary of state, with the number of folios indicated in each such local law, together with the date of publication in newspapers legally designated to make such publication.

3. The secretary of state shall designate two newspapers in each of the counties of Queens and Richmond for the publication of session laws required by law to be published, representing respectively, each of the two principal political parties into which the people of such counties are divided, on the nomination of the county committee of each of such parties.

4. The secretary of state shall send to each newspaper designated pursuant to law, in the order in which they are passed, and as soon as the slips are printed, copies of such concurrent resolutions as are required to be published. Concurrent resolutions proposing amendments to the constitution shall be published in such newspapers once in each week for thirteen consecutive weeks, under the direction of the secretary of state at the expense of the state, in such a manner, by the use of italics and brackets, as to

indicate the new matter added or the old matter eliminated.

5. The charge of such publication of general laws in the newspapers designated to publish said laws, shall be paid by the treasurer of the state on the warrant of the comptroller, after certification by the secretary of state, that the said publication has been regularly made as provided in this section, at the fixed rate of thirty cents for each folio of one hundred words. The charge for such publication of laws of a local nature in the newspapers designated to publish said laws shall be paid by the several counties of the state in which said laws may be published in the manner prescribed by this subdivision, at a rate which shall not be less than twenty-five cents nor more than fifty cents for each folio of one hundred words, as the board of supervisors in the several counties may determine. It shall be the duty of each board of supervisors in the several counties of this state, in making out the assessment-rolls, to assess and levy on the taxable property of the county whose representatives they are, such sums as shall be sufficient to defray the expense of publishing the laws of a local nature applicable only to the county affected, in the newspaper designated.

6. This section shall not apply to counties in which the publication of the laws provided for in this section is regulated by special provision of law, where the same is inconsistent therewith, but the number of papers in which such laws are directed to be advertised, and the rates of compensation for such publications fixed by such special provision shall not be changed by the provisions of this section.

§ 49. **Slips of session laws to be forwarded to clerks.**— The county clerk of each county shall, on or before the first day of January of each year, notify the secretary of state of the total number of towns, villages and cities within such county. The secretary of state, as soon as practicable after the receipt of the slips of the session laws from the printer, shall send to the county clerk of each county a sufficient number of each printed slip of each law and concurrent resolution of the legislature affecting such county or any municipality therein, to supply such county and each such municipality affected by any such law or concurrent resolution, with one copy thereof. The county clerk of each county, as soon as practicable after the receipt thereof, shall send one of each such slips affecting any town, village or city therein to the clerk thereof, and shall retain one of each such slips on file in his office. Such distribution by the county clerk shall be by mail and shall be a county charge. Such slips shall be kept on file in the office of such clerks, arranged in the order in which they were passed. Such clerks shall not be entitled to any fee or compensation for filing such slips or keeping the same on file in their respective offices.

ARTICLE IV.

Legislative Committees; Testimony in Legislative Proceedings.

Section 60. Testimony before legislative committees.
61. Subcommittees.
62. Witnesses' fees.
63. Expenses of committees.

Section 64. Contested elections.
65. Expenses of unsuccessful contestant.
66. Legislative appearances.

§ 60. **Testimony before legislative committees.**— A legislative committee may require the attendance of witnesses in this state whom the committee may wish to examine, or may issue a commission for the examination of witnesses who are out of the state or unable to attend the committee or excused from attendance, which commission if directed by the house or legislature by which the committee is appointed may be executed during the recess of the legislature. A commission issued as provided by this section shall be in the form used in the courts of record of this state and shall be executed in like manner. Unless otherwise instructed by the committee appointing them the commissioners shall examine privately every witness attending before them and shall not make public the particulars of such examination.

§ 61. **Subcommittees.**— Whenever any standing committee of either house of the legislature shall be required to make an inquiry or investigation, such committee may appoint a subcommittee of not less than three of its own members to make such inquiry or investigation, and to take testimony in relation thereto; and such committee or subcommittee and the chairman thereof shall respectively have all the powers and authority, which are conferred by law upon any committee which is authorized to send for persons or papers, or upon the chairman thereof.

§ 62. **Witnesses' fees.**— Any person attending as a witness under the provisions of the last two sections shall receive the same fees as are allowed witnesses in civil actions in courts of record. Such fees need not be prepaid, but the comptroller upon the certificate of the chairman of the committee, and proof by affidavit or otherwise that the same is due, shall draw his warrant for the payment of the amount thereof.

§ 63. **Expenses of committees.**— Whenever by resolution of either house, a committee duly appointed by it, shall be directed to conduct an investigation or take testimony in any other place than the city of Albany, the comptroller shall draw his warrant for the payment of the actual and necessary expenses of the committee or subcommittee having in charge such investigation, inquiry or taking of testimony, and of the officers and employees authorized to accompany them, upon the rendition of an itemized bill of such expenses certified by the chairman of the committee, and approved by the presiding officer of the house by which the committee was appointed, and upon proof by affidavit or otherwise that the same is due.

§ 64. **Contested elections.**— Upon the application of any person desirous of obtaining testimony respecting the election of a member of either house, for the purpose of contesting an election, or resisting a contest thereof, any county judge of the county, or justice of the supreme court of the district, or the mayor or recorder of a city in which the member or applicant shall reside, may require the attendance of persons

named by the applicant, at a specified time and place, to be examined respecting such election; and shall, at the same time, issue a notice to the opposite party of the time, place and object of such examination. The notice shall be served in the same manner as a notice of motion in a court of record. At the time appointed for the examination, upon proof of the due service of such notice, the witnesses who shall attend or who shall be produced by either party, shall be examined under oath before such officer, respecting such matters relating to the election about to be contested, as shall be proposed by either party. The testimony given upon such examination shall be reduced to writing, signed by the witnesses respectively, certified by the officer before whom it was taken, and with the subpœna, notice and proof of the service thereof, shall be sent by him under seal to the clerk of the house to which the election pertains.

A witness attending before such officer, by virtue of a subpœna, shall receive the same fees as are allowed to witnesses in civil suits in courts of record, to be paid by the party at whose instance such witness was summoned.

§ 65. **Expenses of unsuccessful contestant.**—When the seat of any member of the legislature shall be contested, no expense incurred by the contestant, in prosecuting his claim, shall be paid by the state, unless such seat be awarded to the contestant.

§ 66. **Legislative appearances.**— Every person retained or employed for compensation as counsel or agent by any person, firm, corporation or association

to promote or oppose directly or indirectly the passage of bills or resolutions by either house or to promote or oppose executive approval of such bills or resolutions, shall, in each and every year, before any service is entered upon in promoting or opposing such legislation, file in the office of the secretary of state a writing subscribed by such counsel or agent stating the name or names of the person or persons, firm or firms, corporation or corporations, association or associations, by whom or on whose behalf he is retained or employed, together with a brief description of the legislation in reference to which such service is to be rendered. No notice so filed shall be valid for more than thirty days after the adjournment of the session of the legislature held in the year in which the same is filed. It shall be the duty of the secretary of state to provide a docket to be known as the docket of legislative appearances, with appropriate blanks and indices, and to forthwith enter therein the names of the counsel and agents so retained or employed and of the persons, firms, corporations or associations retaining or employing them, together with a brief description of the legislation in reference to which the service is to be rendered, which docket shall be open to public inspection. Upon the termination of such employment the fact of such termination, with the date thereof, may be entered by direction of either such counsel or agent or of the employer. No person, firm, corporation or association shall retain or employ any person to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any legislative measure or measures. No person shall for com-

pensation engage in promoting or opposing legislation except upon appearance entered in accordance with the foregoing provisions of this section. And no person shall accept any such employment or render any such service for compensation contingent upon the passage or defeat of any legislative measure or measures. It shall be the duty of every person, firm, corporation or association within two months after the adjournment of the legislature to file in the office of the secretary of state an itemized statement verified by the oath of such person, or in case of a firm of a member thereof, or in case of a domestic corporation or association of an officer thereof, or in case of a foreign corporation or association of an officer or agent thereof, showing in detail all expenses paid, incurred or promised directly or indirectly in connection with legislation pending at the last previous session, with the names of the payees and the amount paid to each, including all disbursements paid, incurred or promised to counsel or agents, and also specifying the nature of said legislation and the interest of the person, firm, corporation or association therein. The provisions, however, of this section requiring docket entries shall not apply to duly accredited counsel or agents of counties, cities, towns, villages, public boards and public institutions. And the provisions hereof shall not be construed as affecting professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation where such professional service is not otherwise connected with legislative action. Every person, every member of any firm, and every associa-

tion or corporation violating any provision of this section and every person causing or participating in a violation thereof shall be guilty of a misdemeanor and, in case of an individual, shall be punishable by imprisonment in a penitentiary or county jail for not more than one year or by a fine of not more than one thousand dollars or by both, and, in case of an association or corporation, by a fine of not more than one thousand dollars. And in addition to the penalties hereinbefore imposed any corporation or association failing to file the statement of legislative expenses within the time required shall forfeit to the people of the state the sum of one hundred dollars per day for each day after the expiration of the two months within which such statement is required to be filed, to be recovered in an action to be brought by the attorney-general.

ARTICLE V.

Laws Repealed; When to Take Effect.

Section 90. Laws repealed.
91. When to take effect.

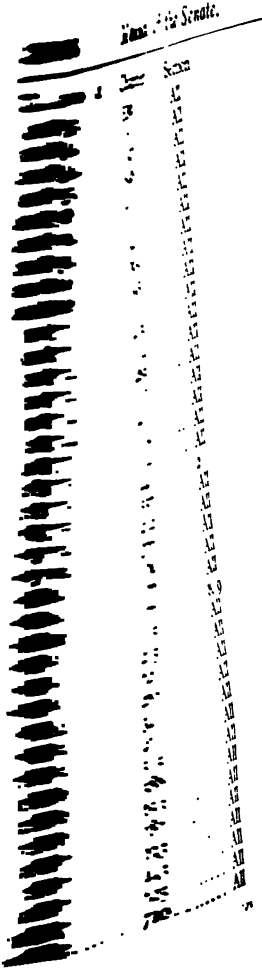
§ 90. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 91. **When to take effect.**— This chapter shall take effect immediately.

:HEDULE OF LAWS

es.... Part I, Cl

Chapter	Sectio
12.....	1
24.....	All
11.....	All
90.....	34
14.....	All
35.....	All
34.....	1
35.....	All
63.....	4–6
31.....	8, 9
104.....	All
70.....	All
27.....	1
173.....	3, 4
194.....	All
44.....	All
17.....	4, 5
150.....	All
246.....	41
2.....	All
2.....	3, 4
14.....	1, 2
195.....	All
3.....	All
266.....	5, 6
228.....	All
6.....	All
19.....	All
124.....	3
184.....	All
189.....	3
127.....	7
222.....	All



Chapter	Section
4	All
58	All
171	All
247	All
317	All
96	All
289	All
281	All
67	All
682	All
715	1, 2; 3, except as to New York county; 4, 5, 6, 7, 8
24	1, 2, 4
132	All
634	All
53	All
138	All
218	1
473	All
491	All
218	All
477	All
856	All
259	All
19	All
88	1
467	All
182	All
293	All
172	All
23	All
240	All
321	All
475	All
427	All
2	All
216	All
289	All

Laws of	Chapter	Section
1853.....	530.....	All
1854.....	51.....	All
1854.....	197.....	All
1855.....	548.....	All
1858.....	331.....	All
1859.....	1.....	All
1859.....	321.....	All
1860.....	395.....	All
1868.....	345.....	All
1870.....	113.....	All
1870.....	215.....	All
1872.....	12.....	All
1872.....	485.....	All
1874.....	15.....	All
1874.....	416.....	All
1875.....	9.....	All
1875.....	112.....	All
1875.....	241.....	2
1875.....	557.....	All
1879.....	212.....	All
1879.....	379.....	All
1880.....	60.....	All
1880.....	76.....	All
1880.....	176.....	8, 9
1881.....	5.....	All
1881.....	215.....	All
1881.....	621.....	All
1882.....	283.....	All
1885.....	341.....	All
1885.....	461.....	All
1886.....	515.....	All
1886.....	588.....	All
1886.....	653.....	All
1887.....	181.....	All
1887.....	193.....	All
1887.....	443.....	All
1887.....	625.....	All
1887.....	710.....	All

Laws of	Chapter	Section
1888.....	4.....	All
1888.....	58.....	All
1888.....	171.....	All
1888.....	247.....	All
1888.....	317.....	All
1889.....	96.....	All
1889.....	289.....	All
1890.....	281.....	All
1891.....	67.....	All
1892.....	682.....	All
1892.....	715.....	1, 2; 3, except as to New York county; 4, 5, 6, 7, 8
1893.....	24.....	1, 2, 4
1893.....	132.....	All
1893.....	634.....	All
1894.....	53.....	All
1894.....	138.....	All
1894.....	218.....	1
1894.....	473.....	All
1894.....	491.....	All
1895.....	218.....	All
1895.....	477.....	All
1895.....	856.....	All
1896.....	259.....	All
1897.....	19.....	All
1901.....	88.....	1
1901.....	467.....	All
1902.....	182.....	All
1902.....	293.....	All
1904.....	172.....	All
1905.....	23.....	All
1906.....	240.....	All
1906.....	321.....	All
1906.....	475.....	All
1907.....	427.....	All
1908	2.....	All
1908.....	216.....	All
1908.....	289.....	All

MISCELLANEOUS.

CONTESTS FOR SEATS.

The Constitution, article 3, section 10, provides that each House shall be the judge of the election, returns and qualifications of its own members.

The member whose right to his seat is disputed holds it under the certificate of the canvassing board, until ousted in due course. But it is not unusual that the person claiming the disputed seat is accorded a seat in the House, and other privileges and rights belonging to members.

Formerly it was customary to allow the unsuccessful contestant the expenses of his contest, and sometimes, where the grounds of the contest had been very strong, the pay and mileage of a member up to the time of a final decision. It may be doubted whether, under the Constitution, as amended in 1874, such a payment would be lawful, even if provided for by statute. Chapter 862 of the Laws of 1892 (§ 65); however, puts the question at rest by providing that no expense incurred by the contestant in prosecuting his claim shall be paid by the State, unless the contestant shall be awarded the seat.

Proceedings in such cases are always initiated by petition, the claimant presenting his case in that form,

with such statements of facts, affidavits, etc., as constitute the ground of his claim.

Chapter 682 of the Laws of 1892 (§ 64) provides that both parties to such contest may, on complying with certain requisitions, have testimony taken pro and con, in advance of the Legislature — then to be laid before the committee having the matter in charge.

The Standing Committee on Privileges and Elections, to whom such cases are always referred, may be appointed in advance of the other standing committees, when such cases present themselves at the opening of a session.

The committee charged with such cases is restricted in its range of inquiry only by the nature of the case and the order of the House. They may confine themselves to the testimony adduced by the parties, or to even narrower bounds, or they may go beyond it. But if the case seems to require that the committee should go behind the ballot boxes and ascertain the intention of the voters on one side and the other — as where the case turns on misspelled or defective ballots — the committee generally take the sense of the House on the subject, especially if such inquiry promises to be extensive and expensive, and to delay a report until an advanced stage of the session.

The legislative journals and documents are full of precedents as to the usuages and rules which govern the committee and the House in such cases.

FORM OF SUBPOENA.

The following form of subpœna is applicable to all cases where an investigation has been ordered by the Assembly, and power granted to send for persons and papers; if the investigation has been intrusted to a joint committee, a slight variation of this form will render it applicable to the case:

Assembly Chamber,
Albany, ..., 19...

To .....:

Sir.— In pursuance of a resolution of the Assembly adopted ....., of which the following is a copy:

On motion of Mr. .....

Resolved (insert the resolution).

You are hereby notified to attend before said committee at ....., in the city of Albany, on ....., the ..... day of ....., 18.., at ..... o'clock ..M., there to give such information, touching the subject of inquiry, as may be in your possession.

And you are hereby further directed to bring with you before said committee, ..., and such other documents in your custody as may be required in the investigation of the said subject.

By order of the committee.

....., Chairman.

The committee may authorize any citizen of suitable age and discretion to serve the subpœnas, though that duty is usually performed by the Sergeant-at-Arms or his assistant. A list of the witnesses should be delivered to the person so authorized, with an order directing him to summon the witnesses and make due return thereof. The following forms will suffice for this purpose:

To .....:

Sir.— In pursuance of a resolution of the Assembly, of which the following is a copy (insert copy of resolution), you will

serve upon each of the persons, named in the notices hereto attached, a copy of such notice, or leave the same at his residence or usual place of business, with some person of suitable age or discretion, and make due return to me of what you shall do in the premises.

By order of the Committee of Investigation.

....., Chairman.

A copy of the subpœna, with the name of each person inserted, should be attached to this order. The following is a suitable form of return:

To the ....., Chairman:

Sir.— In obedience to your order, hereto attached, I have served upon the persons named in the notice to appear as therein directed.

The times and manner of serving such notices were as follows:

Names.	Date when served.	Manner of service.

Signed. .....

Personally appeared before me this ..... day of ....., 19..., ..., who, being duly sworn, deposes and says that the foregoing is a true return.

.....,
Chairman of Committee of Investigation.

Should the person notified refuse to appear and be sworn, or should he refuse, after being sworn, to answer any question put to him by the committee touching the matter to be investigated, it is a contempt of the House and should be so reported to the House by the committee.

The House may thereby cause the arrest of the offender, and after hearing his excuse adjudge such punishment, by fine or imprisonment, or both, as it shall deem proper.

Witnesses summoned in pursuance of a resolution of the House are entitled to compensation for their services. This is paid by the Treasurer, on the warrant of the Comptroller. The accounts are audited by the committee, and a certificate in the following form is signed by the Chairman, upon the authority of which the Comptroller draws his warrant:

STATE OF NEW YORK,

In Assembly, Albany, ..., 19...

Resolved (insert resolution).

Ordered, That Messrs ....., ... and ..... constitute such committee.

By order,

....., Clerk.

At the Capitol in the City of Albany,

....., 19..

I certify that, in pursuance of the foregoing resolution, ..., was duly summoned to attend before the committee of the Assembly, appointed in accordance therewith, and that he appeared and gave testimony in the matter embraced in the resolution. I further certify that this witness resides at ..... in ..... county, distance ..... miles from the Capitol, and that the lawful allowance for his service, expenses and attendance, as fixed by the committee (pursuant to section 62 of chapter 682 of the Laws of 1892), is as follows:

..... miles travel, coming and returning, at .... cts. per mile. .....$

..... day's attendance, $..... per day

Total . . ..$

....., Chairman.

INDEX TO THE LEGISLATIVE LAW.

	Sec.	Page.
Adjournment, certain officers to remain after	13	363
Appointments, to be entered on journal	8	359
Appropriation bills, reference of	23	357
Arrest, exemption of members and officers from	2	354
Assembly, officers and employees of	7	357
Bill, evidence of, when becomes a law	41	368
Bills, appropriating money, reference of	23	367
Bills, to be certified by presiding officers	40	368
Bills, to be drafted by persons appointed by Speaker and Temporary President	24	367
Books purchased by either house, limited	21	365
Bribery	4	355
Clerk's Manual, revised annually	15	363
Clerks of each house, duties of	15	363
Clerks of each house to give undertaking	14	363
Clerks to account to Comptroller	17	364
Clerks to furnish supplies	16	363
Committees, legislative, attendance of witnesses before	60	378
Comptroller, approval of certain purchases by clerks	16	363
Comptroller, clerks to account to	17	364
Concurrent resolutions, deposit with Secretary of State	42	369
Concurrent resolution, to be certified by presiding officers	40	368
Contempts of either house	4	355
Contested elections	64	379
Contested elections, expenses of unsuccessful contestants	65	380
Debates, to be taken by stenographers	19	364
Disorderly conduct	4	355
Documents and journals, distribution of	47	372
Documents, custody of legislative	22	365
Documents, extra copies, limited	21	365
Drafting of bills	24	367
Expulsion of members	3	354
Extra sessions, compensation of officers and employees	11	361
False reports, publication of	4	355
Forms	65	380
Certificate of expenses of witness	65	380
Certificate of service of subpoena	65	380
Order of service of subpoena	65	380
Subpoena	65	380
Governor, certificate of, when bill becomes a law	41	368
Impeachment trials, compensation of officers	11	361

	Sec.	Page.
Journals and documents, distribution of	47	372
Journals, appointments to be entered on	8	359
Laws, duty of Secretary of State	46	71
Laws, session, statement in, as to passage of law	44	370
Laws, session, to be published in volumes	45	370
Laws, time of taking effect	43	369
Legislative committees, attendance of witnesses before.	60	378
Legislative committees, expenses of	63	379
Legislative committees, sub-committees of	61	378
Legislative committees, witness fees	62	379
Legislative documents, custody of	22	365
Legislative expenses, limitation of	21	365
List of members and officers	15	363
Members and officers, exemption from arrest	2	354
Members and officers, list of	15	363
Members, expulsion of	3	354
Members, salary of, how paid	5	355
Officers and employees, compensation during extra session	11	361
Officers and employees, compensation of	10	359
Officers and employees of the Assembly	7	357
Officers and employees of the Senate	6	356
Officers, certain, to attend opening of session	12	362
Officers, detail of, by Speaker	20	365
Officers remaining after adjournment	13	363
Postmasters, duties of	18	364
Postoffice messengers, duties of	18	364
President of Senate, detail of officers for special duty by	20	365
President of Senate, to certify to passage of bills	40	368
President of Senate, to designate certain officers to attend opening of session	12	362
President of Senate, to designate certain officers to remain after adjournment	13	363
Publication of false reports	4	355
Salaries of members, payment of	5	355
Salaries of officers and employees	10	359
Seats, contest for	64	379
Secretary of State, certificate of, when bill becomes a law	41	368
Secretary of State, deposit of laws with	42	369
Secretary of State, duties of, relative to laws	42	369
Senate officers and employees of	6	356
Session laws, distribution of	46	371
Session laws, publication of, by newspapers	48	373
Session laws, slips of, distribution of	49	377
Session laws, statement in, as to passage of law	44	370
Session laws to be published in volumes	45	370
Session, opening of, attendance of certain officers	12	362
Speaker, detail of officers for special duty by	20	365
Speaker to certify to passage of bills	40	368
Speaker to designate certain officers to attend opening of session	12	362

	Sec.	Page.
Speaker to designate certain officers to remain after adjournment	13	363
Speaker to appoint certain persons to draft bills, etc.	24	367
Special committee, stenographers for	9	359
Speeches, copies to be furnished by stenographers	19	364
Statement in session laws as to passage of law	44	370
Stenographers, duties of	19	364
Stenographers to special committees	9	359
Supplies furnished by clerks	16	363
Temporary President of Senate to appoint certain persons to draft bills, etc	24	367
Title of act	1	353
Undertaking, clerks of each house to give	14	363
Witnesses, attendance before legislative committee	60	378
Witness, failure to attend before committee	4	355
Witness fees	62	379